U. S. Circuit Court of Appeals

— SECOND CIRCUIT —

CASES AND BRIEFS

53 1

1929 Term

Vol. 1728

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

COMPAGNIE GENERALE TRANS-ATLANTIQUE,

Plaintiff-in-Error,
(Defendant below),

vs.

THE AMERICAN TOBACCO COMPANY,

Defendant-in-Error,
(Plaintiff below).

TRANSCRIPT OF RECORD

WRIT OF ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

2 CIRCUIT COURT
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Writ of Error.

United States of America, ss.:

PRESIDENT OF THE UNITED STATES OF AMERICA TO THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GREETING:

Because, in the record and proceedings, as also 2
in the rendition of the Judgment which is in the District Court before you or some of you, between American Tobacco Company, Plaintiff, against Compagnie Generale Transatlantique, defendant, a manifest error has happened, to the great damage of the said Compagnie Generale Transatlantique, as is said and appears by its complaint, we being willing that such error if any hath been, should be fully corrected and full and speedy justice done to the parties aforesaid in this behalf, Do COMMAND YOU, if judg- 3
ment be therein given that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Judges of the United States Circuit Court of Appeals for the Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place before the Judges aforesaid on the 4th day of February, 1928, that the record and proceedings aforesaid being inspected, the said Judges of the United States Circuit Court of Appeals for the

4 *Writ of Error.*

Second Circuit may cause further to be done therein, to correct that error what of right and according to law and custom of the United States ought to be done.

WITNESS the Honorable William H. Taft, Chief Justice of the United States, this 6th day of January, in the year One Thousand Nine Hundred and twenty-eight, and of the Independence of the United States, One Hundred and Fifty-
5 second.

ALEX GILCHRIST, JR.,
Clerk of the U. S. District Court,
For the Southern District of New York,
Second Circuit.

The foregoing Writ is hereby allowed.

Dated, January 6th, 1928.

HENRY W. GODDARD,
United States District Judge.
6

Summons.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE AMERICAN TOBACCO CO.,
Plaintiff,
against
COMPAGNIE GENERALE TRANSATLANTIQUE,
Defendant.

L 38
Page 219.

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

WITNESS, the Honorable, Augustus N. Hand, Judge of the District Court of the United States for the Southern District of New (SEAL) York, at the City of New York, this 24th day of September, A. D. 1926.

ALEX. GILCHRIST, JR.,
Clerk.

JONATHAN H. HOLMES,
Plaintiff's Attorney,
Office and Post Office Address,
111 Fifth Ave.,
Borough of Manhattan,
City of New York.

10 **Complaint.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE AMERICAN TOBACCO CO., Plaintiff, against COMPAGNIE GENERALE TRANSATLANTIQUE, Defendant.	L. 38 Page 219.

11 The plaintiff herein, by its attorney Jonathan H. Holmes complains of the defendant and, upon information and belief, alleges:

1. Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, engaged in the manufacture and sale of tobacco products and importation and sale of cigarette papers, having its principal offices in the City of New York, State of New York, in the Southern District of New York and duly authorized and qualified to do business
12 in said State of New York.

2. Defendant herein, is a corporation organized and existing under and by virtue of the laws of the Republic of France, having an office in the Southern District of New York and in the City of New York, State of New York, in which said Southern District of New York is located a point of call on a regular route of steamships operated by the defendant carrier; and during all the times hereinafter mentioned said defendant was and is engaged as a common carrier in the transportation of property between ports of the United

States and France, particularly from Bordeaux and Havre, France, to New York City, and as such common carrier was and is subject to the Federal Shipping Act of 1916, and the United States Shipping Board.

3. That on July 17, 1923, the United States Shipping Board, after full hearing, in all things proceeding legally under the cause pending before it, being United States Shipping Board Docket No. 13, in which the plaintiff herein was the party complainant and the defendant herein the party respondent, made its lawful report, with respect to shipments of cigarette papers in books and cigarette papers in bobbins, and rates applied thereon, moving from Havre and Bordeaux, France, to New York City, New York, in which the Board made the following finding:

> "From a consideration of all the facts and evidence of record, the board concludes and decides that, under the circumstances of this case, the charges collected from complainant were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the shipping act, to the extent that they exceeded the prepaid charges on like shipments from and to the same ports, plus such additional costs as the respondent was compelled to absorb over and above those accruing in connection with prepaid shipments. The record does not afford a basis for finding the extent, if any, to which the complain-

ant has been injured, and the case will be assigned for further hearing in respect to any such injury and the amount of reparation to which the complainant may be entitled."

Said report of the United States Shipping Board is hereto attached as Exhibit "A" and made a part hereof to the same extent as if incorporated herein.

17 4. That in accordance with the aforesaid report and finding said Shipping Board proceeding was assigned for further hearing and on December 29, 1925, The United States Shipping Board, after full hearing in all things proceeding legally under the cause pending before it, to wit: United States Shipping Board Docket No. 13, in which the plaintiff herein was the party complainant and the defendant herein was the party respondent, made its lawful report, finding that plaintiff had been damaged, and entered its lawful order directing the defendant to pay to plaintiff

18 $47,856.98 and interest as damages on account of charging and exacting on complainant's shipments such unduly prejudicial and unlawful rates as aforesaid. Said report and order of December 29, 1925, are hereto attached as Exhibit "B" and made a part hereof to the same extent as if incorporated herein.

5. That thereafter on July 27, 1926, after due notice to the defendant, the United States Shipping Board in all things proceeding legally under the cause pending before it, being United States Shipping Board Docket No. 13, in which the

plaintiff herein was the party complainant and the defendant herein was the party respondent, made its lawful order hereto attached as Exhibit "C" and made a part hereof to the same extent as if incorporated herein, directing the defendant to pay to the complainant $54,030.82 and interest thereon instead of $47,856.98 and interest which latter amount was shown in the Board's order of December 29, 1925, as the result of a clerical error; that $54,030.82 with interest is the amount in which plaintiff was damaged by defendant as found by the United States Shipping Board, which damages plaintiff is entitled to recover of defendant as stated in said reports and order, and for which the plaintiff hereby sues the defendant.

The details of the shipments, the unduly prejudicial and unlawful rates paid, the rates which should have been lawfully paid, the amount of principal together with the basis for calculating interest as damages, which the Board ordered and directed the defendant to pay the plaintiff, are fully set forth in the aforesaid reports and orders of the Board and in the tabulated statement which is hereto attached as Exhibit "D" and made a part hereof as if incorporated herein, the original of which tabulated statement is a part of the official record of the United States Shipping Board in its Docket No. 13.

6. That the damages so claimed by plaintiff were caused by discrimination in freight rates charged plaintiff by defendant and grew out of the fact that during the period from April 7, 1919, to January 15, 1921, the defendant carried for plaintiff from Bordeaux and Havre, France,

to New York City, 279 shipments of cigarette papers in books and cigarette papers in bobbins for which the plaintiff paid to the defendant freight charges in the total sum of $99,755.47 upon delivery at New York City; that said charges were made and paid upon a fixed basis of five Francs to the Dollar in New York; that on pre-paid shipments of identical commodities carried by the defendant for other shippers from Bordeaux and Havre, France, to New York City
23 during the same period and sometimes upon the same vessel the defendant accepted payment of freight charges in France in Francs at the current rate of exchange, at which time the rate of exchange in francs was at a discount; that plaintiff was in direct competition with such other shippers; that on the basis of five Francs to the Dollar in New York plaintiff paid to defendant more freight money than such other shippers for the transportation of the same character of commodity from Bordeaux and Havre, France, to New York City. The details of said
24 shipments, freight charges, amounts paid and amounts which properly should have been paid are fully set forth in Exhibit "D" hereof, and the United States Shipping Board by its reports and opinion in said cause, Docket No. 13, found it to be a fact that the rates charged and paid by plaintiff were unduly prejudicial to it, unduly preferential of its competitors and unjustly discriminatory in violation of Sections 16 and 17 of the Shipping Board Act of 1916, and the said Board found it to be a fact and it is a fact that plaintiff thereby has been damaged in the amount of $54,030.82 and interest, from the dates of the

several payments as they appear on Exhibit "D" hereto annexed. Plaintiff prays that the reports and opinion together with the orders predicated thereon shall be considered a part hereof.

7. Plaintiff alleges that the facts as found by the United States Shipping Board in said reports and opinion are true and correct; that said reports and order of the Board, Exhibits A, B and C hereof, directing the defendant to pay to plaintiff the aforesaid damages as therein shown were duly served upon the defendant, and though often requested said defendant has failed and refused and still fails and refuses to pay the same, or any part thereof, and said defendant is liable to the plaintiff in the full amount of said damages, principal, interest, costs and attorneys' fees.

8. That plaintiff made the shipments and paid said prejudicial preferential, discriminatory and unlawful rates and was thereby damaged in its business and property to the extent of $54,030.82 and interest from the date of the several payments respectively and in the manner set forth in the United States Shipping Board's report of December 29, 1925.

WHEREFORE, the plaintiff demands judgment against the defendant for $54,030.82 and interest from the date of the several payments herein set forth, together with costs and attorneys' fees.

JONATHAN H. HOLMES,
Attorney for the Plaintiff,
Office and Post Office Address,
111 Fifth Avenue,
New York City, N. Y.

28 *Complaint.*

State of New York, }
County of New York, } ss.:

CHARLES T. NEILEY, being duly sworn, deposes and says that he has read the foregoing complaint and knows its contents, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to all those matters he believes it to be true.

29 The reason this verification is made by deponent, and not by plaintiff, is that plaintiff is a foreign corporation, and that deponent is an officer thereof, to-wit: the Secretary.

The source of deponent's information and the grounds of his belief as to those matters not stated to be alleged upon his own knowledge are reports made to him by employees and other representatives of the plaintiff corporation, particularly reports of the proceedings before the U. S. Shipping Board and its decisions.

(Sgn.) CHARLES T. NEILEY.

30 Sworn to before me this
24th day of September, 1926.

(Sgn.) J. R. CUMMINGS,
Notary Public,
Nassau County.

Certificate filed in New York County No. 402.
New York County Register's Certificate No. 8814.
My Commission expires March 30, 1928.

(Seal)

Exhibit A Attached to Complaint. 31

DOCKET NO. 13.

AMERICAN TOBACCO COMPANY,

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE).

Submitted May 24, 1923. Decided July 17, 1923.

Charges exacted for transportation of collect shipments unduly prejudicial to complainant, unduly preferential of its competitors, and 32
unjustly discriminatory, in violation of sections 16 and 17 of shipping act, to extent they exceeded prepaid charges on like shipments from and to the same ports, plus such additional costs as carrier was compelled to absorb over and above those accruing in connection with prepaid shipments.

Extent of injury, if any, to which complainant subjected not afforded by this record, and case assigned for further hearing in respect to any such injury and the amount of reparation to which complainant may be entitled. 33

JONATHAN HOLMES for the complainant.

JOSEPH P. NOLAN for the respondent.

REPORT OF THE BOARD.

Proposed report in this proceeding was served upon the parties, and exceptions thereto filed on behalf of the respondent carrier have been given careful consideration.

The complainant in this case is a New Jersey corporation engaged in the manufacture and dis-

tribution of tobacco products and cigarette papers, with principal offices in New York, N. Y. The respondent is a corporation organized and existing under the laws of the Republic of France, having an office in New York, N. Y., and is engaged as a common carrier in the transportation of property between ports in the United States and France, in which common-carrier capacity it is subject to the applicable provisions of the Federal shipping act of 1916.

35 By complaint filed under authority of section 22 of the shipping act the American Tobacco Company alleges that in respect to certain shipments transported by the respondent steamship company it was subjected to undue and unreasonable prejudice and disadvantage and to the payment of unjustly discriminatory rates, in violation of sections 16 and 17 of that statute. Inasmuch as it was shown at the hearing that the alleged unlawful charges of the carrier are no longer exacted, that part of the complaint requesting the board to order the discontinuance

36 thereof may be disregarded. Consideration of the case in this report, therefore, will be confined to a determination of the issue of unjust discrimination as relates to the charges of the carrier in the past. It should also be noted at this point that if unjust discrimination is found to have existed, the question whether the complainant is entitled to reparation will be determined from evidence to be submitted at a supplemental hearing.

According to the record, it appears that during the period April 7, 1919, to January 3, 1921, there

were carried for the account of the complainant by the French Line from Bordeaux and Havre to New York 279 shipments of cigarette papers in books and cigarette paper in bobbins, for which service freight charges in the total sum of $99,755.47 were collected upon delivery at destination. It is shown by the evidence that these charges were calculated upon a fixed basis of 5 francs to the dollar in New York, and that on prepaid shipments of identical commodities carried for other of its patrons from Bordeaux and 38
Havre to New York during the same period, and in many instances upon the same vessel, the respondent accepted payment in France of freight charges in francs at the current rate of exchange. The result was that the complainant paid more than its competitors for transportation of the same character of commodity from and to the same ports. Thus, for illustration, the freight on cigarette papers on December 19, 1919, was 60 francs per cubic meter. With respect to a shipment of 12,890 cubic meters of this commodity covered by bill of lading issued on that date 39
the complainant paid as freight upon arrival at New York on January 5, 1920, the sum of $154.68, or at the rate of $12 per cubic meter. At the current rate of exchange of 11.18 francs per $1, as shown in the table following, it is seen that the charge to complainant's competitors in connection with shipments carried on the same vessel was but $5.36 per cubic meter, or $6.64 per cubic meter less than the amount paid by complainant. The difference between the charges on all shipments carried for the complainant on the basis of

Exhibit A Attached to Complaint.

5 francs to one dollar and what those charges would have been on the basis of the actual rate of exchange in effect on the dates such shipments were made is alleged to be $53,840, which amount is claimed as reparation.

Rate of exchange at port of origin on date of bill of lading.

Date.	Francs per dollar.	Dollar per franc.	Date.	Francs per dollar.	Dollar per franc.	Date	Francs per dollar.	Dollar per franc.
1919.			1919.			1920.		
Apr. 7.....	5.88	0.1701	Dec. 27.....	10.54½	0.0948	July 23.....	13.14	0.0761
Apr. 22.....	6.02	.1661	Dec. 30.....	10.74½	.0931	July 30.....	13.07½	.0765
Apr. 25.....	6.11	.1637				July 31.....	13.10½	.0763
Apr. 26.....	6.08	.1645	1920.			Aug. 4.....	14.04	.0712
May 17.....	6.45	.1550	Jan. 5.....	10.75½	.0930	Aug. 7.....	13.93	.0718
May 21.....	6.64½	.1505	Jan. 6.....	10.75	.0930	Aug. 14.....	13.82	.0723
May 22.....	6.63	.1508	Jan. 10.....	11.14	.0898	Aug. 20.....	14.12	.0708
July 9.....	6.84	.1461	Jan. 17.....	11.57	.0864	Aug. 21.....	14.12	.0708
July 10.....	6.87	.1455	Jan. 31.....	13.22	.0756	Aug. 26.....	14.19	.0705
July 19.....	7.07½	.1413	Feb. 13.....	14.33½	.0698	Sept. 8.....	14.82½	.0675
July 30.....	7.26	.1377	Feb. 15.....	14.11	.0709	Sept. 10.....	14.85½	.0673
Aug. 2.....	7.28	.1374	Feb. 24.....	14.24½	.0702	Sept. 24.....	14.84	.0674
Aug. 7.....	7.74	.1292	Feb. 29.....	14.29½	.0700	Sept. 25.....	14.84	.0674
Aug. 15.....	7.79½	.1283	Mar. 10.....	13.44	.0744	Sept. 27.....	15.01	.0666
Aug. 20.....	8.17½	.1223	Mar. 13.....	13.41½	.0745	Sept. 29.....	14.91½	.0670
Aug. 23.....	8.17	.1224	Mar. 23.....	14.93½	.0669	Oct. 2.....	14.84½	.0674
Sept. 11.....	8.40½	.1190	Mar. 26.....	14.40	.0694	Oct. 12.....	15.30	.0654
Sept. 18.....	8.74	.1144	Mar. 27.....	14.40	.0694	Oct. 16.....	15.40	.0649
Oct. 3.....	8.44½	.1183	Mar. 30.....	14.90½	.0671	Oct. 18.....	15.45	.0647
Oct. 4.....	8.41½	.1188	Mar. 31.....	14.97	.0668	Oct. 25.....	15.49½	.0645
Oct. 10.....	8.49½	.1177	Apr. 7.....	15.34	.0652	Oct. 30.....	15.65½	.0639
Oct. 18.....	8.62½	.1159	Apr. 8.....	15.26	.0655	Nov. 9.....	17.29	.0578
Oct. 25.....	8.66	.1154	Apr. 10.....	15.81	.0633	Nov. 24.....	16.40	.0610
Oct. 27.....	8.61½	.1161	Apr. 17.....	16.22	.0617	Nov. 25.....	16.71½	.0598
Oct. 28.....	8.67½	.1153	Apr. 24.....	16.63½	.0601	Dec. 2.....	16.45	.0608
Nov. 8.....	9.01½	.1109	Apr. 30.....	16.66½	.0600	Dec. 6.....	16.79½	.0595
Nov. 12.....	9.54	.1048	May 22.....	13.90	.0719	Dec. 18.....	16.73½	.0598
Nov. 13.....	9.34	.1071	May 29.....	13.75	.0727	Dec. 23.....	16.83½	.0594
Nov. 18.....	9.61	.1041	June 7.....	12.98	.0770	Dec. 25.....	16.83½	.0594
Nov. 22.....	9.61½	.1040	June 8.....	12.99½	.0769			
Nov. 24.....	9.60	.1042	June 14.....	13.22½	.0756	1921.		
Nov. 29.....	9.75½	.1025	June 19.....	12.50½	.0800	Jan. 3.....	17.07½	.0586
Nov. 30.....	9.75½	.1025	June 26.....	12.03	.0831			
Dec. 6.....	10.78	.0927	June 30.....	12.15	.0823			
Dec. 19.....	11.18	.0894	July 20.....	12.23½	.0817			

Exhibit A Attached to Complaint. 43

Included in the record are copies of printed tariffs from which the charges for the transportation of the shipments involved in this proceeding were determined. Appearing upon each is the notation:

Important notice.—For shipments accepted with freight payable at destination, the rates of this tariff shall be converted into dollars on the fixed basis of five francs per dollar.

Evidence is presented on behalf of the French 44
Line to the effect that, owing to the stringent financial situation prevailing in France during the period covered by the complaint, the carrier found it desirable to obtain possession of freight money in France at the earliest possible date, and in order to induce prepayment of charges it was found expedient to adopt the method of conversion of rates indicated in the above-quoted tariff provision. In this connection no evidence is of record tending to show why the respondent did not resort to the fundamental right inherent in it as a common carrier to demand and receive 45
payment of freight charges as a condition precedent to transportation.

Stress is laid by the carrier upon the contention that the complainant had equal opportunity with other shippers of cigarette papers to avail itself of the lower charges accorded prepaid shipments, and that as it elected to pay for the service rendered, upon delivery at destination it is precluded from alleging unjust discrimination under the statute. Knowledge of the lower charges to be had by prepayment is denied on

behalf of the complainant, and the evidence as a whole on this point is conflicting.

Section 16 of the Federal shipping act declares it unlawful for any common carrier within the purview thereof, directly or indirectly, "to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." By section 17 of that act it is provided "That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers." The manifest purpose of these provisions is to require common carriers subject to the statute to accord like treatment to all shippers who apply for and receive the same service; in view of which purpose if the tariff condition subjected the complainant to undue discrimination, his knowledge or lack of knowledge of such condition is plainly immaterial. In order to determine whether the complainant in the instant case was in fact subjected to undue and unreasonable prejudice and disadvantage and paid unjustly discriminatory charges for transportation, as alleged, it is pertinent, therefore, under the provisions of the statute above quoted, to consider whether the service furnished the complainant differed from that furnished shippers of cigarette paper who prepaid their freight and who were accorded lower charges.

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The evidence of record indicates that, from a transportation standpoint, the shipments of the complainant were similar in every respect to those of shippers of cigarette paper who prepaid their freight. In so far as their actual physical handling and transportation were concerned, the record is conclusive that the service rendered by the respondent in connection with the consignments of each class of shippers was in every particular identical. It follows that unless conditions incident to the handling and transportation of the complainant's collect shipments existed which warranted the higher charges exacted, discrimination within the contemplation of the statute is established. Conversely, such conditions, to justify the higher charges, must have resulted in some detriment to the carrier comparable in degree to the amount of such higher charges.

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In this relation contention is made on behalf of the French Line that the higher charges paid by the complainant were justified because the service rendered in connection with its collect shipments was of a more expensive character than that rendered shippers of cigarette paper who prepaid their freight. In support thereof it is shown that it was necessary for the respondent to insure the freight on collect shipments or to assume the risk of loss in the event of disaster at sea, as well as to absorb the cost of cabling the freight money collected at destination to France. On the other hand, it is shown by the complainant that the marine insurance rate was but 25 cents per $100 on paper in bulk and 75 cents per $100 on paper in books, and that war-

51

52 risk insurance averaged 7.2 cents per $100 during the period covered by the complaint. The exact cost of cabling does not appear of record. As a whole, the evidence clearly indicates that the difference in the charges exacted from the complainant and from shippers who prepaid their freight greatly and unduly exceeded the total amount of the carrier's additional expenditures resulting from its transportation of the complainant's shipments freight collect. As these in-
53 cidents of the transportation service in connection with the complainant's collect shipments resulted in added expense to the carrier, however, the cost thereof might properly be reflected in a higher charge than for prepaid shipments.

From a consideration of all the facts and evidence of record, the board concludes and decides that, under the circumstances of this case, the charges collected from complainant were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections
54 16 and 17 of the shipping act, to the extent that they exceeded the prepaid charges on like shipments from and to the same ports, plus such additional costs as the respondent was compelled to absorb over and above those accruing in connection with prepaid shipments. The record does not afford a basis for finding the extent, if any, to which the complainant has been injured, and the case will be assigned for further hearing in respect to any such injury and the amount of reparation to which the complainant may be entitled.

Exhibit B Attached to Complaint. 55

UNITED STATES SHIPPING BOARD.

DOCKET NO. 13.

AMERICAN TOBACCO COMPANY,

v.

56

COMPAGNIE GENERALE TRANSATLANTIQUE

(FRENCH LINE)

DOCKET NO. 13.

AMERICAN TOBACCO COMPANY,

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE). 57

Submitted September 30, 1925. Decided December 29, 1925.

Upon further hearing reparation awarded on shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York on account of injury due to unjustly discriminatory charges. Original report, 1 U. S. S. B. 53.

58 *Exhibit B Attached to Complaint.*

JUNIUS PARKER, CLINTON ROBB, and JNO. H. HOLMES for complainant.

JOS. P. NOLAN for respondent.

SUPPLEMENTAL REPORT OF THE BOARD.

Exceptions filed by the parties to the proposed report in this case have been carefully considered.

59 This proceeding involves collect shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York, moved during the period April 7, 1919, to January 3, 1921, and consigned to the complainant American Tobacco Company. In connection with these shipments the respondent French Line exacted charges for loading and carriage calculated upon a fixed basis of 5 francs to $1, while in regard to prepaid shipments of identical commodities carried for other of its patrons from Havre and Bordeaux to New York during the
60 same period and in many instances upon the same vessel, the respondent accepted payment of such transportation charges in francs at the current rates of exchange ranging from 5.88 to 17.07½ francs to $1.

Under authority of section 22 of the shipping act, sworn complaint alleging violations of that statute by the carrier in connection with the higher charges thus exacted was filed by the American Tobacco Company, and hearing was duly conducted by the board in accordance with its rules of practice. In its report in this case,

rendered on July 17, 1923 (1 U. S. S. B. 53), the board decided from the evidence submitted by the parties at such hearing that the charges complained of were unduly prejudicial, unduly preferential, and unjustly discriminatory, in violation of sections 16 and 17 of the shipping act, to the extent which they exceeded prepaid charges on like shipments from and to the same ports and additional incidental costs, if any, which the carrier was compelled to absorb by reason of transporting collect. In regard to reparation contended for, however, it was decided that the record did not afford a basis for determining the extent, if any, to which the complainant had been injured, and the case was assigned for further hearing in respect to any such injury sustained and the amount of reparation to which the complainant might be entitled by reason thereof. Following extensions of time granted at the request of the parties, supplemental hearing was accordingly conducted on May 12, 1925, and the present report and decision are confined to a consideration of the issues whether in fact the complainant was injured within the meaning of section 22 of the shipping act by the payment of the charges found to have been unlawful, and, if injured, the pecuniary amount to which it is entitled as an award of reparation.

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Much of the testimony of the complainant's witnesses examined at the supplemental hearing was addressed in detail to the several kinds of cigarette papers in books purchased and sold during 1919, 1920, and 1921 by the complainant and other tobacco companies with which it competed, and to the various brands of cigarettes in

the manufacture of which the cigarette paper in bobbins was used. The facts of record as provided by the evidence of these witnesses are that during this period all of such cigarette papers in books were imported from France, and, with the exception of some Italian and Japanese paper imported by one of the companies, all paper in bobbins used in the manufacture of cigarettes by both the complainant and such other tobacco companies likewise came from France
65 and was purchased direct or through New York representatives of French manufacturers. Each of the companies (American Tobacco Company, Liggett & Myers Tobacco Company, R. J. Reynolds Tobacco Company, Pierre Lorillard Company, Surbrug Company, and others) had upon the same market its particular cigarette papers or cigarettes which corresponded in general character and quality to respective papers and cigarettes of the other companies. While for short intervals the price of one brand or another was higher or lower than a corresponding brand or
66 another company, it is shown that throughout 1919, 1920, and 1921 the prices obtained by the several companies for their respective products here involved were practically the same. Considerable evidence is of record evincing that at no time was the complainant able to recoup any part of the greater charges paid by it by increasing the prices of its papers or cigarettes.

Testimony was also presented on behalf of the complainant regarding cost of production, method of computing cost items, and other matters having bearing or conceived to have pertinence in a decision of the issues involved.

Although the respondent was represented at the supplemental hearing by counsel, who cross examined the complainant's witnesses at length, no witnesses were presented or testimony offered on its behalf, and nothing was advanced by it tending to show the fact or amount of any additional cost incident to the carriage of the complainant's shipments collect rather than prepaid.

Upon all the facts in this case it is undeniable that the complainant suffered injury within the meaning of section 22 of the statute by reason of 68
the unlawful charges paid. As upon the record the injury thus sustained is fairly comparable to the difference between the transportation charges exacted of the complainant and what they would have been had its shipments been accorded charges based on the current rates of exchange similarly as were those of its competitors, together with interest, that difference and interest constitute the sum to which the complainant is entitled as an award of reparation. The principal of this sum is properly to be calculated upon the basis of the rate of exchange on the 69
dates of the complainant's bills of lading, rather than, as contended by the complainant throughout the proceeding, upon the dates on which the charges were approved by it for payment. As in connection with each of the complainant's shipments the interim between the bill of lading date and the date payment of the charges was approved was one of decrease in the rate of exchange, the principal amount of reparation to which the complainant is entitled is less than the $53,840 prayed for.

70 *Exhibit B Attached to Complaint.*

From a consideration of all the facts, circumstances, and conditions of record the board finds that during the period April 7, 1919, to January 3, 1921, the complainant American Tobacco Company made 279 shipments of cigarette papers in books and cigarette paper in bobbins, as set forth and described in exhibits of record in this proceeding, on which it paid and bore transportation charges in the sum of $99,755.47; that said charges on said shipments were unduly prejudi-
71 cial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the shipping act, as decided by the original report of the board herein, to the extent which they exceeded $51,898.49; that said complainant has been injured by the respondent Compagnie Generale Transatlantique within the meaning of section 22 of that statute in the sum of $47,856.98 and interest thereon at the rate of 6 per cent. per annum from the respective dates of payment of the transportation charges involved as specified
72 in column 24 of complainant's amended Exhibit A, and that the complainant American Tobacco Company is entitled to an award of reparation in the amount of said sum and interest.

An order will be entered accordingly.

Exhibit B Attached to Complaint. 73

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 29th day of December, 1925.

Formal Complaint Docket No. 13

American Tobacco Company *v.* Compagnie Generale Transatlantique (French Line)

Whereas on July 17, 1923, the board entered 74
its report in the above-styled proceeding, among other things assigning for further hearing the issues as to the fact of injury sustained by complainant and the amount of reparation, if any, to which complainant might be entitled by reason of any such injury; and

It appearing that such further hearing and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed its report thereon containing its conclusions, decision, and findings of fact, which said report is hereby referred to 75
and made a part hereof;

IT IS ORDERED, That the respondent Compagnie Generale Transatlantique pay unto the complainant American Tobacco Company on or before ninety days from date hereof, as reparation on account of unlawful transportation charges exacted, the sum of $47,856.98 with interest thereon at the rate of six per cent. per annum computed from the respective dates of payment by complainant of said charges as specified in column

numbered 24 of amended Exhibit A of record herein.

By the board.

(Sgd.) Roy H. Morrill,
Secretary.

[SEAL]

EXHIBIT "C" ATTACHED TO COMPLAINT.

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 27th day of July, 1926.

Formal Complaint Docket No. 13,

American Tobacco Company

v.

Compagnie Generale Transatlantique (French Line).

WHEREAS, On December 29, 1925, the Board entered its report and order in the above-styled proceeding, awarding reparation to said complainant in the sum of $47,856.98 and interest thereon; and

WHEREAS, After correcting clerical errors of complainant duly shown, the sum to which complainant is entitled as an award of reparation is $54,030.82 and interest thereon; now, therefore,

Exhibit C Attached to Complaint. 79

It is Ordered, That said report and order of the Board of December 29, 1925, is modified to award as reparation on account of unlawful transportation charges exacted the sum of $54,-030.82, with interest thereon at the rate of six per cent per annum computed from the respective dates of payment by complainant of said charges as specified in column numbered 24 of amended Exhibit A of record.

By the Board: 80

(Signed)
Samuel Goodacre,
Secretary.

(Seal of the U. S. Shipping Board)

A True Copy:

Samuel Goodacre,
Secretary.

81

THE AMERICAN TOBACCO COMPANY, INC., Complainant,
v.
[illegible] Respondent.
Docket No. 13

1	2	3	4	5	6	7	8	9	10	11	12	13
Date charges were approved for payment	Date of Arrival of Vessels	Names of Vessels	Quantity of Commodity	Description of Commodity	Port of Origin	Port of Destination	Weight, or cubic contents of each shipment ("K" indicating kilos, "M" indicating cubic metars).	Freight rate in francs per unit (1000 kilos or cubic meters)	Amount in dollars paid by Complainant	Freight charges in francs, for quantity column 8 at rate column 9	Loading charges in francs, at French port	Total charges in francs (column 11 plus column 12)
May 1, 1919	April 25, 1919	Chicago	100 cases	Cigarette Books	Bordeaux	New York City	31,300M	60 francs	$ 419.52	1878.00	219.60	2097.60
" 1, "	" 25, 1919	"	50 "	"	"	"	15,650M	60 "	209.81	939.00	110.05	1049.05
" 1, "	" 25, "	"	100 "	"	"	"	31,300M	60 "	419.52	1878.00	219.60	2097.60
" 1, "	" 25, "	"	50 "	"	"	"	15,650M	60 "	209.81	939.00	110.05	1049.05
" 1, "	" 25, "	"	50 "	"	"	"	15,650M	60 "	209.81	939.00	110.05	1049.05
" 1, "	" 25, "	"	50 "	"	"	"	15,650M	60 "	209.81	939.00	110.05	1049.05
" 1, "	" 25, "	"	60 "	"	"	"	15,650M	60 "	209.81	939.00	110.05	1049.05
" 1, "	" 25, "	"	50 "	"	"	"	15,650M	60 "	209.81	939.00	110.05	1049.05
" 19, "	May 16, "	Hudson	50 "	"	"	"	(18,000K)	80 "	104.45	480.00	42.25	522.25
" 19, "	" 16, "	"	100 "	"	"	"	( )		208.85	960.00	84.25	1044.25
" 19, "	" 16, "	"	150 "	"	"	"	18,000K	80 "	313.30	1440.00	126.50	1566.50
" 19, "	" 16, "	"	58 "	"	"	"	6,960K	80 "	121.21	556.80	49.25	606.05
July 31, "	July 29, "	Chicago	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
June 10, "	June 4, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 10, "	" 4, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 10 "	" 4, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 10, "	" 4, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 10, "	" 4, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 10, "	" 4, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
July 31, "	July 29, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 31, "	" 29, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 31, "	" 29, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 31, "	" 29, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 31, "	" 29, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 31, "	" 29, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 31, "	" 29, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
July 31, "	July 29, 1919	Chicago	100 cases	Cigarette Books	Bordeaux	New York City	20,800M	60 francs	249.60	1248.00		1248.00
" 31, "	" 29, "	"	100 "	"	"	"	20,800M	60 francs	249.60	1248.00		1248.00
" 31, "	" 29, "	"	100 "	"	"	"	41,600M	60 "	499.20	2496.00		2496.00
Aug 23, "	Aug 21, "	Niagara	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 23, "	" 21, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 23, "	" 21, "	"	200 "	"	"	"	41,600M	60 "	499.20	2496.00		2496.00
Sept 9, "	Sept 8, "	Chicago	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 9, "	" 8, "	"	200 "	"	"	"	41,600M	60 "	499.20	2496.00		2496.00
Oct 2, "	Oct. 1, "	Niagara	50 "	"	"	"	25,900M	60 "	310.80	1554.00		1554.00
" 2, "	" 1, "	"	125 "	"	"	"	64,750M	60 "	777.00	3885.00		3885.00
" 2, "	" 1, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 2, "	" 1, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 2, "	" 1, "	"	200 "	"	"	"	41,600M	60 "	499.20	2496.00		2496.00
" 2, "	" 1, "	"	200 "	"	"	"	41,600M	60 "	499.20	2496.00		2496.00
" 2, "	" 1, "	"	150 "	"	"	"	31,200M	60 "	374.40	1872.00		1872.00
" 2, "	" 1, "	"	200 "	"	"	"	41,600M	60 "	499.20	2496.00		2496.00
" 2, "	" 1, "	"	200 "	"	"	"	41,600M	60 "	499.20	2496.00		2496.00
" 2, "	" 1, "	"	150 "	"	"	"	31,200M	60 "	374.40	1872.00		1872.00
" 22, "	" 20, "	Chicago	50 "	"	"	"	25,980M	60 "	311.76	1558.80		1558.80
" 22, "	" 20, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 22, "	" 20, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
Dec 3, "	Dec. 1, "	St.Amre	50 "	"	"	"	10,300K	80 "	164.80	824.00		824.00
" 3, "	" 1, "	"	50 "	"	"	"	10,300K	80 "	164.80	824.00		824.00
" 3, "	" 1, "	"	100 "	"	"	"	10,300K	80 "	164.80	824.00		824.00
" 3, "	" 1, "	"	100 "	"	"	"	10,300K	80 "	168.00	824.00		824.00
" 3, "	" 1, "	"	100 "	"	"	"	8,100K	80 "	129.60	648.00		648.00
" 3, "	" 1, "	"	100 "	"	"	"	8,100K	80 "	129.60	648.00		648.00
" 3, "	" 1, "	"	100 "	"	"	"	8,100K	80 "	129.60	648.00		648.00
" 3, "	" 1, "	"	200 "	"	"	"	16,200K	80 "	259.20	1296.00		1296.00
" 4, "	" 4, "	Niagara	56 "	"	"	"	15,120M	60 "	181.44	907.20		907.20
" 4, "	" 4, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 4, "	" 4, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 4, "	" 4, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 17, "	" 16, "	Chicago	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 17, "	" 16, "	"	100 "	"	"	"	20,800M	60 "	249.60	1248.00		1248.00
" 17, "	" 16, "	"	100 "	"	"	"	27,000M	60 "	324.00	1620.00		1620.00

16		17	18	19	20	21	22	23	24	25	26	27	28
Date of bill of lading	Rate of exchange at port of origin on date of B/L: Francs per dollar	Rate of exchange at port of origin on date of B/L: Dollars per franc	Amount of charges, in dollars, by converting francs (column 13) at rate of exchange at port of origin (columns 15 and 16) on date of B/L	Excess Collection, difference between amount paid (column 10) and amount we would have paid by prepayment (column 17)	Date freight charges actually billed by French Line	Rate of exchange in New York on date of freight billing: Francs per dollar	Rate of exchange in New York on date of freight billing: Dollars per franc	Amount of charges, in dollars, by converting francs (column 13) at rate of exchange in New York City (columns 20 and 21) on date of billing	Excess collection, difference between Amount paid (column 10) and amount we would have paid in New York at current rate of exchange (column 22)	Date freight charges received by Respondents (French Line)	Rate of exchange in New York on date freight charges received by French Line: Francs per dollar	Rate of exchange in New York on date freight charges received by French Line: Dollars per franc	Amount of charges in dollars by converting francs (column 13) at rate of exchange in New York (columns 25 and 26) on date freight charges received	Excess collection, difference between amount paid (column 10) and amount would have been paid in New York at current rate of exchange (column 25)
April 7, 1919													
" " "	5.88	.1701	339.73	2.79	April 28, 1919	6.05½	.1652	346.42	73.10	May 1, 1919	6.05	.1653	346.71	72.81
" " "	5.88	.1701	176.41	1.40	" " "	6.05½	.1652	173.25	36.56	" " "	6.05	.1653	173.39	36.42
" " "	5.88	.1701	356.73	2.79	" " "	6.05½	.1652	346.42	73.10	" " "	6.05	.1653	346.71	72.81
" " "	5.88	.1701	178.41	1.40	" " "	6.05½	.1652	173.25	36.56	" " "	6.05	.1653	173.39	36.42
" " "	5.88	.1701	178.41	1.40	" " "	6.05½	.1652	173.25	36.56	" " "	6.05	.1653	173.39	36.42
" " "	5.88	.1701	178.41	1.40	" " "	6.05½	.1652	173.25	36.56	" " "	6.05	.1653	173.39	36.42
April 25, 1919														
" " "	5.88	.1701	178.41	1.40	" " "	6.05½	.1652	173.25	36.56	" " "	6.05	.1653	173.39	36.42
" " "	5.88	.1701	178.41	1.40	" " "	6.05½	.1652	173.25	36.56	" " "	6.05	.1653	173.39	36.42
" " "	6.11	.1637	65.47	8.98	May 17, "	6.40	.1563	81.80	22.85	" 20, "	6.55	.1527	79.78	24.77
July 10 1919	6.11	.1637	170.91	7.94	" " "	6.40	.1562	133.16	45.69	" " "	6.55	.1527	194.42	49.43
May 22, "	6.11	.1637	256.39	35.92	" " "	6.40	.1562	244.77	66.53	" " "	6.55	.1527	239.15	74.14
May 17, "	6.11	.1637	99.12	12.02	" " "	6.40	.1562	94.70	28.51	" " "	6.55	.1527	92.52	28.60
May 22, "	6.87	.1456	181.55	57.95	July 29, "	7.26½	.1376½	171.72	77.82	Jur. 1, "	7.26	.1377	171.90	77.70
" " "	6.63	.1508	188.24	51.36	" 5, "	8.70	.1493	166.27	63.33	June 10, "	6.42	.1558	194.39	55.21
" " "	6.45	.1550	193.49	56.11	" " "	8.70	.1493	166.27	63.33	" " "	6.42	.1558	194.39	55.21
" 21 "	6.63	.1508	188.24	51.36	" " "	8.70	.1493	166.27	63.33	" " "	6.42	.1558	194.39	55.21
" " "	6.63	.1508	188.24	51.36	" " "	8.70	.1493	166.27	63.33	" " "	6.42	.1558	194.39	55.21
July 10, "	6.63	.1508	188.24	51.36	" " "	8.70	.1493	166.27	63.33	" " "	6.42	.1558	194.39	55.21
" " "	6.64½	.1505	187.81	51.79	" " "	8.70	.1493	166.27	63.33	" " "	6.42	.1558	194.39	55.21
" " "	6.64½	.1505	187.81	51.79	" " "	8.70	.1493	166.27	63.33	" " "	6.42	.1558	194.39	55.21
" " "	6.87	.1455	181.55	57.94	July 29, "	7.26½	.1376½	171.72	77.82	Aug. 1, "	7.26	.1377	171.90	77.70
" " "	6.87	.1455	181.66	57.94	" " "	7.26½	.1376½	171.78	77.82	" " "	7.26	.1377	171.90	77.70
July 11, "	6.87	.1455	181.66	57.94	" " "	7.26½	.1376½	171.78	77.82	" " "	7.26	.1377	171.90	77.70
" 10, "	6.87	.1455	181.66	57.94	" " "	7.26½	.1376½	171.78	77.82	" " "	7.26	.1377	171.90	77.70
" 11, "	6.87	.1456	181.66	57.94	" " "	7.26½	.1376½	171.78	77.82	" " "	7.26	.1377	171.90	77.70
	7.07½	.1413	176.39	73.81	" " "	7.26½	.1376½	171.78	77.82	" " "	7.26	.1377	171.90	77.70
	6.87	.1455	181.66	67.94	" " "	7.26½	.1376½	171.78	77.82	" " "	7.26	.1377	171.90	77.70
	6.87	.1455	181.66	67.94	" " "	7.26½	.1376½	171.78	77.82	" " "	7.26	.1377	171.90	77.70
July 10, 1919	7.07½	.1413	176.39	73.21	July 29, 1919	7.26½	.1376½	171.78	77.82	Aug. 1, "	7.26	.1377	171.90	77.70
" 10, "	6.87	.1455	181.65	67.94	" " "	7.26½	.1376½	171.78	77.82	" " "	7.26	.1377	171.90	77.70
" 10, "	6.87	.1456	363.32	135.86	" " "	7.26½	.1376½	343.56	155.64	" " "	7.26	.1377	343.80	155.40
" 30, "	7.26	.1377	171.90	77.70	Aug. 21, "	8.15	.1227	153.13	96.47	" 25, "	8.08	.1238	154.45	95.15
Aug. 2, "	7.28	.1374	342.86	156.34	" " "	8.15	.1227	153.13	96.47	" " "	8.08	.1238	154.45	95.15
" 20, "	8.13½	.1229	152.66	96.94	Sept 8, "	8.30	.1205	150.36	99.24	Sept 10, "	8.35	.1196	149.46	100.14
" " "	8.17½	.1223	305.32	193.68	" " "	8.30	.1205	300.72	198.48	" " "	8.35	.1198	298.92	200.28
Sept 11, "	8.40½	.1190	184.89	125.91	Oct. 1, "	8.50	.1176	182.82	127.98	Oct. 3, "	8.43	.1186	184.34	126.46
" 18, "	8.74	.1144	444.51	332.49	" " "	8.50	.1176	451.06	319.94	" " "	8.43	.1186	460.85	316.15
" " "	8.74	.1144	142.79	106.81	" " "	8.50	.1176	146.82	102.78	" " "	8.43	.1186	148.04	101.56
" 11, "	8.40½	.1190	148.48	101.12	" " "	8.50	.1176	146.82	102.78	" " "	8.43	.1186	148.04	101.56
" " "	8.40½	.1190	296.97	202.23	" " "	8.50	.1176	293.65	205.55	" " "	8.43	.1186	296.08	203.12
" " "	8.40½	.1190	296.97	202.23	" " "	8.50	.1176	293.65	205.55	" " "	8.43	.1186	296.08	203.12
" " "	8.40½	.1190	222.74	151.68	" " "	8.50	.1176	220.22	154.17	" " "	8.43	.1186	222.06	152.34
" " "	8.40½	.1190	296.97	202.23	" " "	8.50	.1176	293.65	205.55	" " "	8.43	.1186	296.08	203.12
" 18, "														
" 11, "	8.74	.1144	285.60	213.00	" " "	8.50	.1176	293.65	205.55	" " "	8.43	.1186	296.08	203.12
Oct. 4, "	8.40	.1190	222.74	151.68	" " "	8.50	.1176	220.23	154.17	" " "	8.43	.1186	222.06	152.34
" " "	8.41	.1188	148.24	126.52	" 18, "	8.63	.1159	180.63	131.13	" 24, "	8.63	.1159	180.62	131.14
" " "	9.41	.1188	148.31	101.29	" " "	8.63	.1159	141.61	104.99	" " "	8.63	.1159	144.61	104.99
" 25, "	8.41	.1188	148.31	101.29	" " "	8.63	.1159	141.61	104.99	" " "	8.63	.1159	144.61	104.99
" " "	8.66	.1154	98.16	69.65	Dec. 1, "	9.86	.1014	83.57	81.23	Dec. 4, "	10.28½	.0972	80.12	84.68
" " "	8.66	.1154	95.15	69.68	" " "	9.86	.1014	83.57	81.23	" " "	10.28½	.0972	80.12	84.68
" 27, "	8.66	.1154	95.16	69.65	" " "	9.86	.1014	83.57	81.23	" " "	10.28½	.0972	80.12	84.68
" 28, "	8.61½	.1161	96.64	72.36	" " "	9.86	.1014	83.57	84.43	" " "	10.28½	.0972	80.12	87.68
" " "	8.66	.1154	74.83	54.77	" " "	9.86	.1014	65.72	63.88	" " "	10.28½	.0972	63.00	66.60
" " "	8.66	.1154	74.83	54.77	" " "	9.86	.1014	65.72	63.88	" " "	10.28½	.0972	63.00	66.60
" " "	8.66	.1154	74.83	54.77	" " "	9.86	.1014	65.72	63.88	" " "	10.28½	.0972	63.00	66.60
" 28, "	8.66	.1154	74.83	54.77	" " "	9.86	.1014	65.72	63.88	" " "	10.28½	.0972	63.00	66.60
Nov. 8, "	8.67½	.1153	149.39	109.61	" " "	9.86	.1014	131.44	127.76	" " "	10.28½	.0972	126.00	133.20
" " "	9.01½	.1109	100.63	80.81	" 5, "	10.12	.0988	89.64	91.80	" 6, "	10.72	.0933	84.52	96.82
" " "	9.01½	.1109	138.44	111.16	" " "	10.12	.0988	123.31	126.29	" " "	10.72	.0933	116.41	133.19
" 12, "	9.01½	.1109	138.44	111.16	" " "	10.12	.0988	123.31	126.29	" " "	10.72	.0933	116.41	133.19
" 30, "	9.01½	.1109	138.44	111.16	" " "	10.12	.0988	123.31	126.29	" " "	10.72	.0933	116.41	133.19
" " "	9.01½	.1109	138.44	111.16	" " "	10.12	.0988	123.31	126.29	" " "	10.72	.0933	116.41	133.19
" " "	9.54	.1048	130.82	118.78	" " "	10.12	.0988	123.31	126.29	" " "	10.72	.0933	116.41	133.19
	9.75½	.1025	127.93	121.67	" 15, "	11.10	.0901	112.43	137.17	" 18, "	11.25	.0889	110.93	138.67
	9.75½	.1025	127.93	121.67	" " "	11.10	.0901	112.43	137.17	" " "	11.25	.0889	110.93	138.67
	9.75½	.1025	127.93	121.67	" " "	11.10	.0901	112.43	137.17	" " "	11.25	.0889	110.93	138.67
	9.75½	.1025	187.93	187.93	" " "	11.10	.0901	145.95	178.05	" " "	11.25	.0889	144.00	180.00

[illegible]	17, 1919	Dec.	16, 1919	Chicago	100 cases	Cigarette Books	Bordeaux	New York City	27,000M	60	"	324.00	1620.00		1620.00
"	17, "	April	25, "	"	26 "	" Paper	"	"	15,392M	60	"	208.35	923.52	108.23	1031.75
"	17, "	"	25, "	"	162 "	" "	"	"	95,904M	60	"	1285.22	5754.24	671.86	6426.10
"	17, "	"	25, "	"	54 "	" "	"	"	31,968M	60	"	428.48	1918.08	224.32	2144.40
"	17, "	"	25, "	"	48 "	" "	"	"	28,416M	60	"	380.87	1704.96	199.39	1904.35
"	18, "	May	16, "	Pullman	44 "	" "	"	"	10,777K	80	"	187.62	832.16	75.94	936.10
"	18, "	"	16, "	"	54 "	" "	"	"	14,124K	80	"	245.85	1129.92	90.33	1229.25
"	19, "	"	16, "	"	48 "	" "	"	"	11,627K	80	"	202.41	930.16	81.89	1012.05
June	10, "	June	4, "	Chicago	45 "	" "	"	"	24,210M	60	"	290.52	1452.60		1452.60
"	10, "	July	29, "	"	54 "	" "	"	"	29,052M	60	"	348.63	1743.12		1743.15
July	31, "	July	29, "	"	48 "	" "	"	"	26,448M	60	"	317.38	1586.90		1586.90
"	31, "	"	29, "	"	54 "	" "	"	"	29,754M	60	"	357.05	1785.25		1785.25
"	31, "	"	29, "	"	138 "	" "	"	"	86,940M	60	"	1043.28	5216.40		5216.40
"	31, "	"	29, "	"	48 "	" "	"	"	26,448M	60	"	317.38	1586.90		1586.90
"	31, "	"	29, "	"	25 "	" "	"	"	13,775M	60	"	165.30	826.50		826.50
"	31, "	"	29, "	"	30 "	" "	"	"	12,660M	60	"	151.92	759.60		759.60
Aug.	23, "	Aug.	21, "	Niagara	50 "	" "	"	"	34,200M	60	"	410.40	2052.00		2052.00
"	23, "	"	21, "	"	50 "	" "	"	"	34,200M	60	"	410.40	2052.00		2052.00
"	23, "	"	21, "	"	50 "	" "	"	"	34,200M	60	"	410.40	2052.00		2052.00
"	23, "	"	21, "	"	48 "	" "	"	"	26,448M	60	"	317.38	1586.90		1586.90
"	23, "	"	21, "	"	36 "	" "	"	"	25,992M	60	"	311.90	1559.50		1559.50
"	23, "	"	22, "	La Touraine	24 "	" "	Havre	"	15,960M	60	"	191.52	957.60		957.60
"	26, "	"	25, "	La Lorraine	32 "	" "	"	"	22,304M	60	"	267.64	1338.20		1338.20
Sept	3, "	Sept	2, "	Rochambeau	26 "	" "	"	"	13,988M	60	"	181.83	839.28	69.87	909.15
"	22, "	"	14, "	La Savoie	25 "	" "	"	"	14,100M	60	"	169.20	846.00		846.00
"	25, "	"	21, "	La Touraine	54 "	" "	"	"	31,266M	60	"	375.19	1875.95		1875.95
Nov.	1, "	Oct.	27, "	La Lorraine	64 "	" "	"	"	33,600M	60	"	445.20	2015.00	201.00	2217.00
"	1, "	"	27, "	"	67 "	" "	"	"	36,175M	60	"	466.06	2110.50	222.80	2332.30
"	18, "	Nov.	18, "	Lafayette	54 "	" "	"	"	31,266M	60	"	414.27	1875.96	195.39	2071.35
"	18, "	"	18, "	"	25 "	" "	"	"	14,475M	60	"	191.79	863.50	90.45	958.95
Dec.	3, "	Dec.	1, "	St. Amure	34 "	" "	Bordeaux	"	6,385K	80	"	101.84	509.20		509.20
Nov.	25, "	Nov.	24, "	La Savoie	60 "	" "	Havre	"	28,980M	60	"	384.58	1737.00	180.90	1917.90
Dec.	5, "	Dec.	4, "	Jacques Cartier	54 "	" "	"	"	12,915K	80	"	215.88	1001.20	78.20	1079.40
"	8, "	"	1, "	La Touraine	12 "	" "	"		7,104K	60	"	94.12	426.24	43.76	470.00
"	8, "	"	5, "	La Lorraine	17 "	" "	"	"	9,387M	60	"	124.10	562.02	58.48	620.50
"	12, "	"	10, "	Rochambeau	52 "	" "	"	"	31,564M	60	"	418.21	1893.84	197.21	2091.05
"	20, "	"	19, "	Lafayette	48 "	" "	"	"	29,136M	60	"	385.08	1746.15	182.00	1928.15
Jan.	31, 1920	Jan.	30, 1920	Niagara	100 "	" Books	Bordeaux	"	27,000M	60	"	324.00	1620.00		1620.00
"	31, "	"	30, "	"	100 "	" "	"	"	27,000M	60	"	324.00	1620.00		1620.00
						Cigarette									
Jan.	31, 1920	Jan.	30, 1920	Niagara	100 cases	Books	Bordeaux	New York City	27,000M	60	francs	324.00	1620.00		1620.00
"	31, "	"	30, "	"	100 "	"	"	"	27,000M	60	"	324.00	1620.00		1620.00
"	31, "	"	30, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	31, "	"	30, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	31, "	"	30, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	31, "	"	30, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	31, "	"	30, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	31, "	"	30, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	31, "	"	30, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	31, "	"	30, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	31, "	"	30, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	31, "	"	30, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
Mar.	2, "	Feb.	28, "	Chicago	100 "	"	"	"	54,000M	60	"	648.00	3240.00		3240.00
"	2, "	"	28, "	"	100 "	"	"	"	27,000M	60	"	324.00	1620.00		1620.00
"	2, "	"	28, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	2, "	"	28, "	"	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	2, "	"	28, "	"	200 "	"	"	"	41,600M	60	"	499.20	2496.00		2496.00
"	13, "	Mar.	12, "	Frankincer	100 "	"	"	"	11,300K	80	"	180.80	904.00		904.00
"	13, "	"	12, "	"	100 "	"	"	"	11,300K	80	"	180.80	904.00		904.00
"	13, "	"	12, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	13, "	"	12, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	13, "	"	12, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	13, "	"	12, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	13, "	"	12, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	15, "	"	15, "	Niagara	100 "	"	"	"	20,800M	60	"	249.60	1248.00		1248.00
"	15, "	"	15, "	"	200 "	"	"	"	41,600M	60	"	499.20	2496.00		2496.00
May	6, "	May	5, "	"	200 "	"	"	"	22,600K	80	"	361.60	1808.00		1808.00
"	6, "	"	5, "	"	100 "	"	"	"	11,300K	80	"	180.80	904.00		904.00
"	6, "	"	5, "	"	100 "	"	"	"	11,300K	80	"	180.80	904.00		904.00
"	6, "	"	5, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	6, "	"	5, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	6, "	"	5, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	6, "	"	5, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
						Cigarette									
June	22, 1920	June	18, 1920	Caroline	100 cases	Books	Bordeaux	New York City	11,300K	80	francs	180.80	904.00		904.00
"	22, "	"	18, "	"	100 cases	"	"	"	11,300K	80	"	180.80	904.00		904.00
"	22, "	"	18, "	"	100 "	"	"	"	11,300K	80	"	180.80	904.00		904.00
"	22, "	"	18, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	22, "	"	18, "	"	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
June	30, "	"	28, "	Strathlorne	100 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	30, "	"	28, "	"	100 "	"	"	"	11,300K	80	"	180.80	904.00		904.00
"	30, "	"	28, "	"	200 "	"	"	"	8,100K	80	"	129.60	648.00		648.00
"	29, "	"	28, "	Niagara	100 "	"	"	"	16,200K	80	"	259.20	1296.00		1296.00
July	24, "	July	22, "	Farnsworth	200 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	24, "	"	22, "	"	100 "	"	"	"	54,000M	70	"	756.00	3780.00		3780.00
"	24, "	"	22, "	"	100 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	24, "	"	22, "	"	100 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	24, "	"	22, "	"	200 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	24, "	"	22, "	"	100 "	"	"	"	41,600M	70	"	582.40	2912.00		2912.00
"	24, "	"	22, "	"	100 "	"	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	24, "	"	22, "	"	100 "	"	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	24, "	"	22, "	"	100 "	"	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	24, "	"	22, "	"	100 "	"	"	"	20,800M	70	"	291.20	1456.00		1456.00
Aug.	12, "	Aug.	12, "	Caroline	100 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	12, "	"	12, "	"	100 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	12, "	"	12, "	"	200 "	"	"	"	54,000M	70	"	756.00	3780.00		3780.00
"	12, "	"	12, "	"	100 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	12, "	"	12, "	"	100 "	"	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	12, "	"	12, "	"	200 "	"	"	"	41,600M	70	"	582.40	2912.00		2912.00
"	12, "	"	12, "	"	100 "	"	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	12, "	"	12, "	"	100 "	"	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	12, "	"	13, "	Niagara	100 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	18, "	"	13, "	"	100 "	"	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	18, "	"	15, "	"	100 "	"	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	18, "	"	13, "	"	100 "	"	"	"	20,800M	70	"	291.20	1456.00		1456.00
Sept	15, "	Sept	14, "	Western	100 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	15, "	"	14, "	"	100 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	15, "	"	15, "	"	100 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
"	15, "	"	14, "	"	100 "	"	"	"	27,000M	70	"	378.00	1890.00		1890.00
						Cigarette									
Sept	15, 1920	Sept	14, "	Western	100 "										

		9.77½	.1025	156.07	157.93	Dec. 15, "	"	11.10	.0901	145.95	178.05	Dec. 18, "	11.25	.0889	144.00	180.00
Nov.	30, 1919	5.88	.1701	176.47	50.88	April 28, "	"	6.05½	.1652	170.39	35.95	May 1, "	6.05	.1653	170.53	35.82
Apr.	7, "	5.88	.1701	1092.87	192.35	" "	"	6.05½	.1652	1061.29	223.93	" " "	6.05	.1653	1062.16	223.06
"	" "	5.88	.1701	354.35	64.13	" "	"	6.05½	.1652	353.82	74.66	" " "	6.05	.1653	354.11	74.37
"	" "	5.88	.1701	323.87	57.00	" "	"	6.05½	.1652	314.51	66.36	" " "	6.05	.1653	314.76	66.11
"	" "	6.06	.1645	154.29	33.73	May 17, "	"	6.40	.1563	146.58	41.04	" 20, "	6.55	.1527	143.22	44.40
"	26, "	6.02	.1661	204.19	41.66	" "	"	6.40	.1563	192.07	53.78	" " "	6.55	.1527	187.67	58.18
"	22, "	6.01	.1661	158.11	34.30	" "	"	6.40	.1563	148.13	44.28	" " "	6.55	.1527	144.51	47.90
"	"	6.63	.1508	210.09	71.43	June 5, "	"	6.48	.1543	224.17	56.35	June 10, "	6.42	.1557	220.26	64.26
"	"	6.64½	.1506	262.32	96.31	" "	"	6.48	.1543	263.00	79.63	" " "	6.42	.1557	271.52	77.11
"	21, "	6.87	.1456	230.99	88.39	July 29, "	"	7.26½	.1376½	218.43	98.95	Aug. 1, "	7.26	.1378	218.58	99.80
July	10, "	6.87	.1456	258.86	97.19	" "	"	7.26½	.1376½	245.73	111.32	" " "	7.26	.1378	246.90	111.15
"	" "	6.87	.1458	758.30	283.98	" "	"	7.26½	.1367½	718.02	325.26	" " "	7.26	.1378	718.51	324.77
"	" "	6.87	.1456	230.98	86.40	" "	"	7.26½	.1367½	218.43	98.95	" " "	7.26	.1378	218.58	98.80
"	" "	6.84	.1461	120.83	44.47	" "	"	7.26½	.1367½	113.78	51.54	" " "	7.26	.1378	113.84	51.46
"	9, "	6.87	.1456	110.57	41.38	" "	"	7.26½	.1367½	104.66	47.36	" " "	7.26	.1378	104.83	47.29
"	10, "	7.26	.1377	282.64	127.75	Aug. 21, "	"	8.15	.1227	251.78	156.62	" 25, "	8.08	.1238	253.96	156.44
"	30, "	7.26	.1377	282.64	127.75	" "	"	8.15	.1227	251.78	156.62	" " "	8.08	.1238	253.96	156.44
"	30, "	7.26	.1377	282.54	127.76	" "	"	8.15	.1227	251.78	156.62	" " "	8.08	.1238	253.96	156.44
"	"	7.26	.1377	218.58	98.80	" "	"	8.15	.1227	194.71	122.67	" " "	8.08	.1238	196.40	120.98
"	"	7.28	.1374	214.22	97.68	" "	"	8.15	.1227	191.38	120.65	" " "	8.08	.1238	193.01	118.89
Aug.	2, "	7.74	.1292	125.72	67.80	" "	"	8.05	.1227	117.50	74.02	" " "	8.08	.1236	118.51	73.01
"	7, "	7.79½	.1283	171.67	93.97	" 25, "	"	8.06	.1238	159.62	102.02	" 27, "	8.00	.1250	157.27	100.37
"	15, "	8.17	.1224	111.28	70.58	Sept 2, "	"	8.17	.1224	111.28	70.58	Sept 5, "	8.33	.1200	109.14	72.69
"	23, "	8.44½	.1183	100.18	69.02	Oct. 12, "	"	8.64	.1171	99.06	70.14	Oct. 24, "	8.63	.1159	98.03	71.17
Oct.	3, "	8.49½	.1177	220.62	154.37	" 20, "	"	8.65	.1156	216.87	158.32	" 28, "	10.68½	.0936	175.57	199.62
"	10, "	8.62½	.1159	357.04	188.16	" 27, "	"	8.64	.1157	356.60	188.60	Nov. 5, "	9.02	.1109	249.79	139.41
"	13, "	8.62½	.1159	270.33	195.53	" "	"	8.64	.1157	270.06	196.00	" " "	9.02	.1109	288.66	207.79
"	"	9.01	.1109	229.77	184.50	Nov. 17, "	"	8.64	.1048	217.12	197.15	" 20, "	9.70	.1031	213.54	200.73
Nov.	9, "	9.01	.1109	196.37	85.42	" "	"	9.64	.1048	100.52	92.27	" " "	9.70	.1031	58.86	92.93
"	"	8.67½	.1152	58.70	43.14	Dec. 1, "	"	9.86	.1014	51.64	50.20	Dec. 4, "	10.28½	.0972	49.51	53.33
Oct.	28, "	9.34	.1071	205.34	176.24	Nov. 22, "	"	9.62	.1039	148.87	184.21	Nov. 25, "	9.70	.1031	197.72	185.86
Nov.	10, "	9.61	.1041	112.32	103.56	Dec. 3, "	"	10.12	.0988	109.88	109.22	Dec. 8, "	11.00	.0909	96.13	117.72
"	18, "	9.61½	.1040	48.97	45.16	" 1, "	"	9.68	.1014	47.67	46.45	" 9, "	11.40	.0877	41.28	52.14
"	22, "	9.60	.1042	54.64	49.46	" 5, "	"	10.54	.0949	58.87	65.23	" " "	11.40	.0877	54.43	69.67
"	24, "	9.75½	.1025	214.36	203.85	" 10, "	"	11.55	.0866	161.04	257.17	" 15, "	11.10	.0901	186.36	229.85
"	29, "	10.78	.0927	179.05	207.00	" 18, "	"	11.25	.0888½	171.58	214.47	" 29, "	10.56½	.0936	180.61	205.32
Dec.	5, "	10.74½	.0931	150.76	173.24	Jan. 29, 1920	"	13.17½	.0759	122.96	201.04	Feb. 7, 1920	14.34	.0697	112.97	211.03
"	30, "	10.74½	.0931	150.76	173.24	" "	"	13.17½	.0759	122.96	201.04	" " "	14.34	.0697	112.97	211.03
"	30, "															

Dec.	30, 1919	10.74½	.0931	150.76	173.24	Jan. 29, 1920	"	13.17½	.0759	122.96	201.04	Feb. 3, "	14.34	.0697	112.97	211.03
"	30, "	10.74½	.0931	150.76	173.24	" "	"	13.17½	.0759	122.96	201.04	" " "	14.34	.0697	112.97	211.03
"	" "	10.74½	.0931	116.14	133.46	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	" "	10.74½	.0931	116.14	133.46	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	" "	10.74½	.0931	116.14	133.46	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	" "	10.74½	.0931	116.14	133.46	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	" "	10.74½	.0931	116.14	133.46	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	" "	10.74½	.0931	116.14	133.46	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	" "	10.74½	.0931	116.14	133.46	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	" "	10.74½	.0931	116.14	133.46	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	" "	10.74½	.0931	116.14	133.46	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
Jan.	9 1920	10.74½	.0931	116.14	133.46	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	" "	10.75½	.0930	116.03	133.57	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	31, "	10.75½	.0930	116.03	133.57	" "	"	13.17½	.0759	94.72	154.88	" " "	14.34	.0697	87.03	162.57
"	" "	18.22	.0756	245.08	402.92	Feb. 28, "	"	14.23½	.0703	227.77	420.23	Mar. 3 "	14.16½	.0706	268.73	419.27
"	" "	13.22	.0756	122.54	201.46	" "	"	14.22½	.0703	113.88	210.12	" " "	14.16½	.0706	114.37	209.63
"	" "	13.22	.0756	94.40	155.20	" "	"	14.22½	.0703	87.73	161.87	" " "	14.16½	.0706	88.10	161.50
"	" "	13.22	.0756	94.40	155.20	" "	"	14.23½	.0703	87.73	161.87	" " "	14.16½	.0706	88.10	161.50
"	" "	13.22	.0756	94.40	155.20	" "	"	14.22½	.0703	87.73	161.87	" " "	14.16½	.0706	88.10	161.50
"	" "	13.22	.0756	188.80	310.40	" "	"	14.22½	.0703	175.47	323.73	" 16, "	13.35	.0749	185.97	312.23
Feb.	15, "	14.11	.0709	64.06	116.74	Mar. 12, "	"	13.35	.0749	67.72	113.08	" " "	13.35	.0749	67.72	113.06
"	" "	14.11	.0709	64.05	116.74	" "	"	13.35	.0749	67.72	113.08	" " "	13.35	.0749	67.72	113.08
"	" "	14.11	.0709	45.92	83.68	" "	"	13.35	.0749	46.54	81.06	" " "	13.35	.0749	46.54	81.06
"	" "	14.11	.0709	45.92	83.68	" "	"	13.35	.0749	46.54	81.06	" " "	13.35	.0749	46.54	81.06
"	" "	14.11	.0709	45.92	83.68	" "	"	13.35	.0749	46.54	81.06	" " "	13.35	.0749	46.54	81.06
"	" "	14.11	.0709	45.92	83.68	" "	"	13.35	.0749	46.54	81.06	" " "	13.35	.0749	46.54	81.06
"	" "	14.11	.0709	45.92	83.68	" "	"	13.35	.0749	46.54	81.06	" " "	13.35	.0749	46.54	81.06
"	29, "	14.11	.0709	45.92	83.68	" "	"	13.35	.0749	46.54	81.06	Mar. 16, "	13.56	.0737	47.79	81.81
"	" "	14.29½	.0700	67.30	162.30	" 15, "	"	13.56	.0737	92.04	157.56	" " "	13.56	.0737	92.04	157.56
Mar.	26, "	14.29½	.0700	174.60	324.50	" "	"	13.55	.0737	184.07	315.15	May 7, "	15.80	.0632	157.97	341.23
March	31, "	14.40	.0694	125.55	236.05	May 4, "	"	16.41	.0609	110.18	251.42	" " "	15.80	.0632	114.43	247.17
April	7, "	14.97	.0668	60.39	120.41	" "	"	16.41	.0609	5 .08	125.72	" " "	15.80	.0632	57.22	123.58
Mar.	23, "	15.34	.0652	58.93	121.67	" "	"	16.41	.0609	55.08	125.72	" " "	15.80	.0632	57.22	123.58
"	28, "	14.93½	.0669	43.38	86.22	" "	"	16.41	.0609	39.49	90.11	" " "	15.80	.0632	41.01	88.59
"	30, "	14.40	.0694	45.00	84.60	" "	"	16.41	.0609	39.49	90.11	" " "	15.80	.0632	41.01	88.59
"	31, "	14.90½	.0671	43.48	86.12	" "	"	16.41	.0609	39.49	90.11	" " "	15.80	.0632	41.01	88.59
April	6, "	14.97	.0668	43.29	86.31	" "	"	16.41	.0609	39.49	90.11	" " "	15.80	.0632	41.01	88.59
		15.26	.0655	42.46	87.14	" "	"	16.41	.0609	39.49	90.11	" " "	15.80	.0632	41.01	88.59

April	30, 1920	16.66½	.0600	54.25	128.55	June 21, 1920		12.50	.0800	72.32	108.48	June 23, 1920	11.87½	.0842	76.13	104.67
"	" "	16.66½	.0600	54.25	128.55	" "	"	12.50	.0800	72.32	108.48	" " "	11.87½	.0842	76.13	104.67
May	22, "	13.90	.0719	65.04	115.76	" "	"	12.50	.0800	72.32	108.48	" " "	11.87½	.0842	76.13	104.67
April	30, "	16.66½	.0600	38.93	90.67	" "	"	12.50	.0800	51.84	77.76	" " "	11.87½	.0842	54.57	75.03
"	" "	16.66½	.0600	38.93	90.67	" "	"	12.50	.0800	51.84	77.76	" " "	11.87½	.0842	54.57	75.03
May	22, "	13.90	.0719	46.82	82.98	" "	"	12.50	.0800	51.84	77.76	" " "	11.87½	.0842	54.57	75.03
June	7, "	12.98	.0770	69.65	111.15	" 23,	"	12.16½	.0822	74.30	106.50	July 1, "	12.08½	.0827	74.80	106.00
"	8, "	12.99½	.0769	49.86	77.74	" "	"	12.16½	.0822	53.27	76.33	" " "	12.08½	.0827	53.64	75.98
"	" "	12.99½	.0769	99.70	159.50	" "	"	12.16½	.0822	106.53	152.67	" " "	12.06½	.0827	107.24	151.26
"	14, "	13.22	.0756	142.90	235.10	" 28,	"	12.10	.0825½	156.20	221.80	" " "	12.08½	.0827	156.39	221.61
"	30, "	12.15	.0823	311.11	444.89	July 22,	"	12.87½	.0777	298.59	462.41	" 24, "	13.16	.0760	287.23	468.77
"	" "	12.15	.0823	155.56	222.44	" "	"	12.87½	.0777	146.80	231.20	" " "	13.16	.0760	143.62	234.38
"	" "	12.15	.0823	155.56	222.44	" "	"	12.87½	.0777	146.80	231.20	" " "	13.16	.0760	143.62	234.38
"	" "	12.15	.0823	155.56	222.44	" "	"	12.87½	.0777	146.80	231.20	" " "	13.16	.0760	143.62	234.38
"	" "	12.15	.0823	239.67	342.73	" "	"	12.87½	.0777	226.17	356.23	" " "	13.16	.0760	222.28	361.12
"	" "	12.15	.0823	119.83	171.37	" "	"	12.87½	.0777	113.09	178.11	" " "	13.16	.0760	110.64	180.56
"	" "	12.15	.0823	119.83	171.37	" "	"	12.87½	.0777	113.09	178.11	" " "	13.16	.0760	110.64	180.56
"	" "	12.15	.0823	119.83	171.37	" "	"	12.87½	.0777	113.09	178.11	" " "	13.16	.0760	110.64	180.56
"	" "	12.15	.0823	119.83	171.37	" "	"	12.87½	.0777	113.09	178.11	" " "	13.16	.0760	110.64	180.56
July	23, "	13.14	.0761	143.84	234.16	Aug. 11,	"	13.70	.0730	137.96	240.04	Aug. 14, "	13.75½	.0727	137.40	240.60
"	" "	13.14	.0761	143.84	234.16	" "	"	13.70	.0730	137.96	240.04	" " "	13.75½	.0727	137.40	240.60
"	" "	13.14	.0761	287.67	486.33	" "	"	13.70	.0730	275.91	480.08	" " "	13.75½	.0727	274.81	481.19
"	" "	13.14	.0761	143.84	234.16	" "	"	13.70	.0730	137.96	240.04	" " "	13.75½	.0727	137.40	240.60
"	" "	13.14	.0761	110.80	180.40	" "	"	13.70	.0730	106.28	184.92	" " "	13.75½	.0727	105.85	185.35
"	" "	13.14	.0761	221.61	360.79	" "	"	13.70	.0730	212.55	369.85	" " "	13.75½	.0727	211.70	370.70
"	" "	13.14	.0761	110.80	180.40	" "	"	13.70	.0730	106.28	184.92	" " "	13.75½	.0727	105.85	185.35
"	" "	13.14	.0761	110.80	180.40	" "	"	13.70	.0730	106.28	184.92	" " "	13.75½	.0727	105.85	185.35
July	21, "	13.10	.0763	144.22	233.78	" 13,	"	13.81	.0724	136.86	241.14	" 19, "	13.99½	.0715	135.05	242.95
"	30, "	13.07	.0765	111.35	179.85	" "	"	13.81	.0724	105.43	185.77	" " "	13.99½	.0715	104.04	187.16
"	" "	13.07	.0765	111.35	179.85	" "	"	13.81	.0724	105.43	185.77	" " "	13.99½	.0715	104.04	187.16
"	" "	13.07	.0765	111.35	179.85	" "	"	13.81	.0724	105.43	185.77	" " "	13.99½	.0715	104.04	187.16
Aug.	14, "	13.82	.0723	136.75	241.25	Sept. 13,	"	15.27½	.0655	123.73	254.27	Sept. 16, "	15.20	.0658	124.34	253.66
"	20, "	13.82	.0723	136.75	241.25	" "	"	15.27½	.0655	123.73	254.27	" " "	15.20	.0658	124.34	253.66
"	26, "	14.12	.0708	133.85	244.15	" "	"	15.27½	.0655	123.73	254.27	" " "	15.20	.0658	124.34	253.66
"	" "	14.19	.0705	133.19	244.81	" "	"	15.27½	.0655	123.73	254.27	" " "	15.20	.0658	124.34	253.66
		14.19	.0705	133.19	244.81	" "	"	15.27½	.0655	123.73	254.27	" " "	15.20	.0658	124.34	253.66

Sept	15, 1920	Sept	14, "	Western	100	"	Cigarette Books	Bordeaux	New York City	27,000M	70	francs	378.00	1890.00		1890.00
"	15, "	"	14, "	"	100	"	" "	"	"	20,800M	70	"	291.20	1456.00		1890.00
"	15, "	"	14, "	"	100	"	" "	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	15, "	"	14, "	"	200	"	" "	"	"	41,600M	70	"	582.40	2912.00		1456.00
"	15, "	"	14, "	"	100	"	" "	"	"	20,800M	70	"	291.20	1456.00		2912.00
"	15, "	"	14, "	"	200	"	" "	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	15, "	"	14, "	"	200	"	" "	"	"	41,600M	70	"	582.40	2912.00		1456.00
"	30, "	"	30, "	Farnsworth	100	"	" "	"	"	41,600M	70	"	582.40	2912.00		2912.00
"	30, "	"	30, "	"	200	"	" "	"	"	27,000M	70	"	378.00	1890.00		2912.00
"	30, "	"	30, "	"	100	"	" "	"	"	30,200M	70	"	422.80	2114.00		1890.00
"	30, "	"	30, "	"	100	"	" "	"	"	20,800M	70	"	291.20	1456.00		2114.00
"	30, "	"	30, "	"	100	"	" "	"	"	27,000M	70	"	378.00	1890.00		1456.00
"	30, "	"	30, "	"	200	"	" "	"	"	20,800M	70	"	291.20	1456.00		1890.00
"	30, "	"	30, "	"	100	"	" "	"	"	21,600M	70	"	302.40	1512.00		1456.00
"	30, "	"	30, "	"	200	"	" "	"	"	27,000M	70	"	378.00	1890.00		1512.00
Oct.	19, "	Oct.	18, "	Caroline	100	"	" "	"	"	21,600M	70	"	302.40	1512.00		1890.00
"	19, "	"	18, "	"	100	"	" "	"	"	20,800M	70	"	291.20	1456.00		1512.00
"	19, "	"	18, "	"	100	"	" "	"	"	27,000M	70	"	378.00	1890.00		1456.00
"	19, "	"	18, "	"	100	"	" "	"	"	20,800M	70	"	291.20	1456.00		1890.00
"	19, "	"	18, "	"	100	"	" "	"	"	20,800M	70	"	291.20	1456.00		1456.00
"	19, "	"	18, "	"	200	"	" "	"	"	27,000M	70	"	378.00	1890.00		1456.00
"	19, "	"	18, "	"	200	"	" "	"	"	30,200M	70	"	422.80	2114.00		1890.00
Nov.	20, "	Nov.	19, "	Montana	200	"	" "	"	"	23,200M	70	"	324.80	1624.00		2114.00
"	20, "	"	19, "	"	100	"	" "	"	"	32,400M	70	"	453.60	2268.00		1624.00
"	20, "	"	19, "	"	200	"	" "	"	"	20,800M	70	"	291.20	1456.00		2268.00
Dec.	22, "	Dec.	21, "	Easterly	200	"	" "	"	"	22,400M	70	"	313.60	1568.00		1456.00
"	21, "	"	21, "	Caroline	100	"	" "	"	"	22,400M	70	"	313.60	1568.00		1568.00
"	21, "	"	21, "	"	200	"	" "	"	"	27,000M	70	"	378.00	1890.00		1568.00
"	21, "	"	21, "	"	100	"	" "	"	"	22,400M	70	"	313.60	1568.00		1890.00
"	21, "	"	21, "	"	200	"	" "	"	"	20,800M	70	"	291.20	1456.00		1568.00
"	21, "	"	21, "	"	200	"	" "	"	"	22,400M	70	"	313.60	1568.00		1456.00
"	21, "	"	21, "	"	100	"	" "	"	"	32,400M	70	"	453.60	2268.00		1568.00
"	21, "	"	21, "	"	100	"	" "	"	"	20,800M	70	"	291.20	1456.00		2268.00
"	21, "	"	21, "	"	200	"	" "	"	"	27,000M	70	"	378.00	1890.00		1456.00
"	21, "	"	21, "	"	200	"	" "	"	"	22,400M	70	"	313.60	1568.00		1890.00
"	21, "	"	21, "	"	100	"	" "	"	"	32,400M	70	"	453.60	2268.00		1568.00
Jan.	7, "	Jan.	5, "	La Peruse	54	"	" Papers	Havre		12,690M	60	"	170.79	773.40	80.25	2268.00
"	8, "	"	7, "	La Touraine	54	"	" "	"		35,964M	60	"	476.51	2157.64	222.71	853.95
Jan.	7, 1920	Jan.	6, 1920	La Peruse	52	cases	Cigarette Papers	Havre	New York City	12,325K	60	francs	163.30	739.50	77.00	2382.35
"	7, "	"	8, "	"	50	"	"	"	"	11,896K	60	"	157.62	713.76	74.34	816.50
"	20, "	"	19, "	La Lorraine	54	"	"	"	"	32,776K	60	"	434.90	1966.56	207.94	788.10
"	22, "	"	21, "	Lafayette	54	"	"	"	"	31,968M	60	"	423.57	1918.08	199.77	2174.50
"	22, "	"	21, "	"	48	"	"	"	"	28,416M	60	"	376.51	1704.96	177.59	2117.85
"	26, "	"	27, "	La Savoie	26	"	"	"	"	15,762M	60	"	209.10	946.92	98.58	1882.55
Feb.	16, "	Feb.	12, "	Rochambeau	54	"	"	"	"	29,700M	60	"	393.52	1782.00	185.60	1045.50
"	16, "	"	12, "	"	54	"	"	"	"	31,968M	60	"	423.57	1918.08	199.77	1967.60
Mar.	8, "	Mar.	6, "	La Touraine	54	"	"	"	"	32,022M	60	"	424.28	1921.32	200.08	2117.85
Feb.	25, "	Feb.	24, "	La Savoie	54	"	"	"	"	32,022M	60	"	424.28	1921.32	200.08	2121.40
"	25, "	"	24, "	"	54	"	"	"	"	31,056M	60	"	411.49	1863.36	194.09	2121.40
Mar.	8, "	Mar.	6, "	La Touraine	54	"	"	"	"	32,022M	60	"	424.28	1921.32	200.08	2057.45
"	24, "	"	23, "	La Savoie	54	"	"	"	"	31,212M	60	"	413.55	1872.75	195.03	2121.40
"	24, "	"	23, "	La Peruse	54	"	"	"	"	12,783K	80	"	420.49	1022.64	79.81	2067.75
Apr.	7, "	Apr.	5, "	Lafayette	8	"	"	"	"	4,856M	60	"	64.32	291.36	30.34	1102.45
June	2, "	June	1, "	La Lorraine	2	"	"	"	"	958M	60	"	12.68	57.48	5.92	321.70
April	7, "	Apr.	5, "	Lafayette	52	"	"	"	"	29,380M	60	"	389.28	1762.80	183.60	63.40
"	7, "	"	5, "	"	54	"	"	"	"	30,456M	60	"	403.54	1827.36	190.34	1946.40
"	20, "	"	17, "	Rochambeau	52	"	"	"	"	34,532M	60	"	458.87	2071.92	222.43	2017.70
"	20, "	"	17, "	"	52	"	"	"	"	31,564M	60	"	416.23	1893.84	187.31	2294.35
"	20, "	"	17, "	"	54	"	"	"	"	36,564M	60	"	484.46	2193.84	288.46	2081.15
"	21, "	"	20, "	La Touraine	54	"	"	"	"	35,694M	60	"	472.93	2141.64	223.01	2422.30
"	26, "	"	26, "	La Lorraine	54	"	"	"	"	32,724M	60	"	433.58	1963.44	204.46	2364.65
May	5, "	May	5, "	Leopoldina	144	"	"	"	"	87,284M	60	"	1156.24	5235.84	545.36	2167.90
June	9, "	June	9, "	La Touraine	34	"	"	"	"	21,624M	60	"	286.51	1297.44	135.11	5781.20
"	9, "	"	9, "	"	54	"	"	"	"	34,344M	60	"	455.05	2060.64	214.61	1432.55
"	9, "	"	9, "	"	54	"	"	"	"	34,344M	60	"	455.05	2060.64	214.61	2277.25
"	9, "	"	9, "	"	54	"	"	"	"	34,344M	60	"	455.05	2060.64	214.61	2277.25
"	9, "	"	9, "	"	56	"	"	"	"	35,515M	60	"	471.91	2130.90	226.65	2277.25
"	30, "	"	29, "	La Savoie	54	"	"	"	"	32,778M	90	"	630.97	2950.02	204.83	2359.55
"	30, "	"	29, "	"	56	"	"	"	"	33,992M	90	"	654.34	3059.28	212.42	3154.85
					) 84	"	"	"	"	( )				9608.76	677.24	3271.70
July	7, "	July	6, "	La Lorraine	) 56	"	"	"	"	(106,764M)	90	"	2055.20			10276.00
					) 54	"	"	"	"	( )						
July	13, 1920	July	9, 1920	La Touraine	54	cases	Cigarette Papers	Havre	New York City	33,534M	90	francs	645.52	3018.06	209.54	3227.60
Aug.	5, "	Aug.	5, "	Jacques Cartier	119	"	"	"	"	67,096M	70	"	1023.21	4695.72	419.33	5116.05
"	14, "	"	14, "	Rochambeau	78	"	"	"	"	43,992M	90	"	846.84	3959.28	274.92	4234.20
"	14, "	"	12, "	"	54	"	"	"	"	30,456M	90	"	586.27	2741.04	190.31	2931.35
"	24, "	"	24, "	La Lorraine	54	"	"	"	"	34,844M	90	"	670.74	3135.96	217.74	3353.70
"	31, "	"	30, "	Lafayette	108	"	"	"	"	68,688M	90	"	1322.24	6181.92	429.28	6611.20
Sept.	20, "	Sept.	18, "	La Savoie	46	"	"	"	"	26,608M	90	"	512.20	2394.72	166.28	2561.00
"	20, "	"	16, "	Rochambeau	54	"	"	"	"	32,778M	70	"	499.86	2294.46	204.84	2499.30
"	20, "	"	18, "	"	108	"	"	"	"	65,556M	70	"	999.72	4588.92	409.68	4998.60
Oct.	13, "	Oct.	13, "	"	55	"	"	"	"	33,328M	70	"	508.25	2332.96	208.29	2541.25
"	16, "	"	16, "	La Lorraine	55	"	"	"	"	32,368M	90	"	623.08	2913.12	202.28	3115.40
"	18, "	"	16, "	Wanniston Court	54	"	"	"	"	31,212M	70	"	475.97	2184.64	195.01	2379.65
"	18, "	"	16, "	"	54	"	"	"	"	31,212M	70	"	475.97	2184.64	195.01	2379.65
"	23 "	"	22, "	La Touraine	56	"	"	"	"	32,368M	70	"	493.61	2265.76	202.28	2468.05
"	26 "	"	26, "	La Savoie	54	"	"	"	"	30,510M	90	"	587.31	2745.90	190.65	2936.55
"	26, "	"	25, "	"	56	"	"	"	"	32,368M	90	"	623.08	2913.12	171.28	3084.40
Nov.	6, "	Nov.	4, "	Leopoldina	54	"	"	"	"	30,510M	70	"	465.28	2135.70	190.70	2326.40
"	9, "	"	9, "	La Lorraine	55	"	"	"	"	32,368M	90	"	623.08	2913.12	202.28	3115.40
"	20, "	"	19, "	La Touraine	55	"	"	"	"	32,368M	70	"	623.08	2265.76	849.64	3115.40
Dec.	18, "	Dec.	16, "	Roussillon	56	"	"	"	"	32,424M	70	"	494.46	2289.68	202.64	2472.30
"	16, "	"	16, "	"	57	"	"	"	"	33,003M	70	"	503.29	2310.21	206.24	2816.45
"	16, "	"	16, "	La Touraine	57	"	"	"	"	31,495M	90	"	606.27	2834.55	196.90	3031.45
"	30, "	"	30, "	Rochambeau	56	"	"	"	"	31,640M	90	"	609.07	2847.60	197.75	3045.35
Jan.	11, 1921	Jan.	4, 1921	La Lorraine	108	"	"	"	"	51,020M	90	"	1174.63	4591.80	1281.25	5873.05
"	11, "	"	4, "	"	54	"	"	"	"	30,510M	90	"	587.31	2745.90	190.65	2936.55
"	21, "	"	15, "	La Touraine	64	"	"	"	"	30,510M	90	"	587.31	2745.90	190.65	2936.55
"	21, "	"	15, "	La Touraine	59	"	"	"	"	33,335L	90	"	651.13	3000.15	225.50	3225.65

$ 99,755.47

Aug. 14, 1920	13.82	.0724	136.75	241.24	Sept. 13, 1920	15.27½	.0655	123.72	254.27	Sept. 15, "	15.20	.0658	124.34	253.66
" 20, "	14.12	.0708	103.11	188.09	" " "	15.27½	.0655	95.32	195.88	" " "	15.20	.0658	95.79	195.41
" 26, "	14.19	.0705	102.61	188.59	" " "	15.27½	.0655	95.32	195.88	" " "	15.20	.0658	95.79	195.41
" "	14.19	.0705	205.21	377.19	" " "	15.27½	.0655	190.63	391.77	" " "	15.20	.0658	191.58	390.82
" 14, "	13.82	.0724	105.35	185.88	" " "	15.27½	.0655	95.34	195.88	" " "	15.20	.0658	95.79	195.41
" 14, "	13.82	.0724	105.38	185.85	" " "	15.27½	.0655	95.34	195.88	" " "	15.20	.0658	95.79	195.41
" " "	13.82	.0724	210.70	371.70	" " "	15.27½	.0655	190.63	391.77	" " "	15.20	.0658	191.58	390.82
Sept. 10, "	13.82	.0724	210.70	371.70	" " "	15.27½	.0655	190.63	391.77	" " "	15.20	.0658	191.58	390.82
" " "	14.85½	.0673	127.23	250.77	" 27, "	14.94	.0669	126.50	251.50	Oct. 2, "	14.91	.0671	126.76	251.24
" " "	14.85½	.0673	142.31	280.49	" " "	14.94	.0669	141.50	281.30	" " "	14.91	.0671	141.76	281.02
" " "	14.85½	.0673	98.01	193.19	" " "	14.94	.0669	97.46	193.74	" " "	14.91	.0671	97.65	193.50
" " "	14.85½	.0673	127.23	250.77	" " "	14.94	.0669	223.50	251.50	" " "	14.91	.0671	225.76	251.24
" " "	14.85½	.0673	98.01	193.19	" " "	14.94	.0669	97.46	193.74	" " "	14.91	.0671	97.65	193.55
" " "	14.85½	.0673	101.78	200.62	" " "	14.94	.0669	101.20	201.20	" " "	14.91	.0671	101.41	200.99
" " "	14.85½	.0673	127.23	250.77	" " "	14.94	.0669	126.50	251.50	" " "	14.91	.0671	126.76	251.24
" 29, "	14.85½	.0673	101.78	200.62	" " "	14.94	.0669	101.20	201.20	" " "	14.91	.0671	101.41	200.99
" 27, "	14.91½	.0670	97.61	193.59	Oct. 18, "	15.44	.0648	94.30	196.90	" 20, "	15.42	.0648	94.39	195.81
" 29, "	15.01	.0666	125.92	262.08	" " "	15.44	.0648	122.41	255.59	" " "	15.42	.0648	122.53	255.47
" 24, "	14.91½	.0670	97.61	193.59	" " "	15.44	.0648	94.30	196.90	" " "	15.42	.0648	94.39	196.81
" " "	14.84	.0674	98.11	193.09	" " "	15.44	.0648	94.30	196.90	" " "	15.42	.0648	94.39	196.81
" " "	14.84	.0674	127.36	280.64	" " "	15.44	.0648	122.41	255.59	" " "	15.42	.0648	122.53	255.47
" " "	14.84	.0674	142.45	280.38	" " "	15.44	.0648	136.91	285.69	" " "	15.42	.0648	137.05	285.75
Oct. 18, "	14.84	.0674	109.43	215.37	" " "	15.44	.0648	105.18	219.82	" " "	15.42	.0648	105.28	219.52
" " "	15.45	.0647	146.80	306.80	Nov. 19, "	16.71½	.0598	135.69	317.91	Nov. 23, "	16.03½	.0624	141.44	318.16
" " "	15.45	.0647	94.24	196.96	" " "	16.71½	.0598	87.16	204.04	" " "	16.03½	.0624	90.80	200.40
Nov. 25, "	15.45	.0647	101.49	212.11	" " "	16.71½	.0598	93.81	219.79	" " "	16.03½	.0624	97.79	215.81
" 24, "	16.71½	.0598	93.81	219.79	Dec. 20, "	17.04	.0587	92.02	221.58	Dec. 23, "	16.86	.0593	98.00	220.60
" " "	16.40	.0610	115.24	262.76	" " "	17.04	.0587	110.92	267.08	" 22, "	16.89	.0592	111.90	266.10
" " "	16.40	.0610	95.61	217.99	" " "	17.04	.0587	92.02	221.58	" " "	16.89	.0592	92.64	220.76
" " "	16.40	.0610	88.78	202.42	" " "	17.04	.0587	85.45	205.75	" " "	16.89	.0592	86.20	205.00
" " "	16.40	.0610	95.61	217.99	" " "	17.04	.0587	92.02	221.58	" " "	16.89	.0592	92.64	220.76
" " "	16.40	.0610	136.29	315.31	" " "	17.04	.0587	133.10	320.50	" " "	16.89	.0592	134.28	319.32
" " "	16.40	.0610	88.78	202.42	" " "	17.04	.0587	85.45	205.75	" " "	16.89	.0592	86.20	205.00
" " "	16.40	.0610	115.24	262.76	" " "	17.04	.0587	110.92	267.08	" " "	16.89	.0592	111.90	266.10
" " "	16.40	.0610	95.61	217.99	" " "	17.04	.0587	92.02	221.58	" " "	16.89	.0592	92.64	220.76
" " "	16.40	.0610	130.29	315.31	" " "	17.04	.0587	133.10	320.50	" " "	16.89	.0592	134.28	319.32
Dec. 19, 1919	16.40	.0610	88.78	202.42	" " "	17.04	.0587	85.45	205.75	" " "	16.89	.0592	86.20	205.00
" 27, "	11.18	.0894	76.38	94.41	Jan. 5, "	10.75	.0930	79.43	91.36	Jan. 9, 1920	11.18	.0895	76.38	94.41
	10.84	.0948	225.94	250.57	" 6, "	10.84	.0922½	219.79	255.72	" " "	11.18	.0895	213.11	263.40
Dec. 19, 1919														
" " "	11.18	.0894	73.03	90.27	Jan. 5, 1920	10.75	.0930	75.95	87.35	Jan. 9, 1920	11.18	.0894	73.03	90.27
Jan. 6, 1920	11.18	.0894	70.49	87.13	" " "	10.75	.0930	73.31	84.31	" " "	11.18-	.0894	70.49	87.13
" 10, "	10.75	.0930	202.27	232.63	" 19, "	11.78	.0849	184.59	250.31	" 21, "	12.00	.0833	181.21	253.69
" " "	11.14	.0898	190.11	233.46	" 21, "	12.00	.0833	176.49	247.08	" 23, "	11.92½	.0839	177.60	245.97
" 17, "	11.14	.0898	168.99	207.52	" 21, "	12.00	.0833	156.88	219.63	" " "	11.92½	.0839	157.86	218.65
" 21, "	11.57	.0864	90.36	118.75	" 27, "	12.82½	.0779½	81.52	127.58	" 29, "	13.17½	.0759	79.35	129.75
" " "	13.22	.0756	148.83	244.69	Feb. 12, "	14.45	.0692	136.17	257.35	Feb. 18, "	14.22	.0703	138.37	258.15
Feb. 24, "	13.22	.0756	150.20	263.37	" " "	14.45	.0692	146.56	277.01	" " "	14.22	.0703	148.93	274.64
" 13, "	14.24½	.0702	148.92	275.38	Mar. 5, "	13.70	.0730	154.85	269.43	Mar. 9, "	13.75	.0727	154.28	270.00
" " "	14.33½	.0698	147.99	276.29	Feb. 24, "	14.19	.0705	149.50	274.78	Feb. 27, "	14.27½	.0701	148.61	275.67
" 24, "	14.33½	.0698	143.52	267.97	" " "	14.19	.0705	145.00	266.49	" " "	14.27½	.0701	144.13	267.36
Mar. 13, "	14.24½	.0702	148.92	275.36	Mar. 5, "	13.70	.0730	154.85	269.43	Mar. 9, "	13.75	.0727	154.28	270.00
" 10, "	13.41½	.0745	154.14	259.41	" 23, "	14.50	.0690	142.60	270.95	" 25, "	14.20	.0704	145.62	267.93
" 27, "	13.44	.0744	82.03	138.46	" 26, "	14.25	.0702	77.36	143.13	" 29, "	14.45	.0692	76.29	144.20
May 22, "	14.40	.0694	22.34	42.00	Apr. 5, "	14.42	.0693	22.31	42.03	Apr. 6, "	15.23	.0657	21.12	43.22
Mar. 27, "	13.90	.0719	4.56	8.12	June 1, "	13.00	.0769	4.88	7.80	June 3, "	13.10	.0763	4.84	7.64
" " "	14.40	.0694	135.17	254.11	Apr. 5, "	14.42	.0693	134.98	254.30	Apr. 8, "	15.23	.0657	127.80	261.48
Apr. 7, "	14.40	.0694	140.12	263.42	" " "	14.42	.0693	139.92	263.62	" " "	15.23	.0657	132.48	271.06
" " "	15.34	.0652	149.57	309.30	" 17, "	16.30	.0613	140.76	318.11	" 21, "	16.40	.0610	139.90	318.97
" " "	15.34	.0652	135.67	280.56	" " "	16.30	.0613	127.68	288.55	" " "	16.40	.0610	126.90	289.33
" 10, "	15.34	.0652	157.91	226.35	" " "	16.30	.0613	138.61	335.85	" " "	16.40	.0610	147.70	336.76
" 17, "	15.81	.0633	149.57	323.36	Feb. 20, "	13.32½	.0750½	177.46	295.47	" 22, "	16.54½	.0604	142.92	330.01
" 24, "	16.22	.0617	133.66	299.92	Apr. 26, "	16.97½	.0589	127.71	305.87	" 29, "	16.45	.0608	131.79	301.79
May 29, "	16.63½	.0601	347.53	808.71	May 4, "	16.41	.0609	352.30	803.94	May 7, "	15.60	.0633	365.90	790.34
" " "	13.75	.0727	104.19	182.32	June 8, "	12.96	.0772	110.54	175.97	June 10, "	13.05	.0766	109.77	176.74
" " "	13.75	.0727	165.47	289.58	" " "	12.96	.0772	175.56	279.49	" " "	13.05	.0766	174.35	280.70
" " "	13.75	.0727	165.47	289.58	" " "	12.96	.0772	175.56	279.49	" " "	13.05	.0766	174.35	280.70
" " "	13.75	.0727	165.47	289.58	" " "	12.96	.0772	175.56	279.49	" " "	13.05	.0766	174.35	280.70
June 19, "	13.75	.0727	171.60	380.31	" " "	12.96	.0772	182.06	289.85	" " "	13.05	.0766	180.81	291.10
" " "	12.50½	.0800	252.29	378.58	" 28, "	12.10	.0826½	260.73	370.24	July 1, "	12.08½	.0827	261.05	369.92
" 26, "	12.50½	.0800	281.83	392.71	" " "	12.10	.0826½	870.39	383.95	" 8, "	12.08½	.0827	270.72	385.82
	12.03	.0831	854.20	1201.00	July 6, "	11.64	.0859	882.81	1172.39	" " "	11.96	.0836	859.19	1196.01
	12.15	.0823	265.68	379.67	July 10, 1920	11.83½	.0845	272.72	372.60	July 14, 1920	12.03½	.0831	268.18	377.34
June 30, 1920	12.23½	.0817	418.15	606.06	Aug. 5, "	13.71	.0729	373.16	650.05	Aug. 7, "	13.65	.0733	374.80	648.41
July 20, "	14.04	.0712	301.58	545.26	" " "	13.81	.0724	306.60	540.24	" 17, "	13.68½	.0731	309.40	537.44
Aug. 4, "	14.04	.0712	208.79	377.48	" " "	13.81	.0724	212.26	374.01	" " "	13.68½	.0731	214.20	372.07
" " "	13.93	.0718	240.75	429.99	" 16, "	13.67½	.0731	245.24	425.50	" 18, "	13.91	.0719	241.10	429.64
" 7, "	13.82	.0724	476.37	843.87	" 23, "	14.24	.0702	464.27	857.97	" 25, "	14.34	.0697	461.03	861.21
" 14, "	14.12	.0708	181.37	330.83	" 29, "	14.30	.0699	179.09	333.11	Sept. 3, "	14.39	.0695	177.97	334.23
" 21, "	14.82½	.0675	168.89	331.27	Sept. 17, "	14.92½	.0670	167.46	332.40	" 21, "	14.82½	.0685	168.59	331.27
Sept 8, "	14.82½	.0675	337.17	662.55	" " "	14.92½	.0670	334.90	664.82	" " "	14.82½	.0685	337.17	662.55
" " "	14.82½	.0675	171.42	336.83	" " "	14.92½	.0670	170.27	337.98	" " "	14.82½	.0685	171.42	336.83
Oct. 7, "	14.84½	.0674	209.86	413.22	Oct. 11, "	15.15	.0660	255.63	217.45	Oct. 14, "	15.24½	.0656	204.36	418.72
" 2, "	14.84	.0674	160.37	315.60	" 16, "	15.44	.0647½	154.14	321.83	" 19, "	15.56	.0643	152.95	323.02
Sept 25, "	14.84	.0674	160.37	315.60	" " "	15.44	.0647½	154.14	321.83	" " "	15.56	.0643	152.95	323.02
" " "	14.84	.0674	160.37	315.60	" " "	15.44	.0647½	154.14	321.83	" " "	15.56	.0643	152.95	323.02
" " "	15.30	.0654	161.31	332.30	" 22, "	15.44	.0647½	159.85	333.76	" " "	15.56	.0643	152.95	323.02
Oct. 12, "	15.40	.0649	190.69	396.62	" 25, "	15.55	.0643	188.85	398.46	" 26, "	15.55	.0643	158.72	334.89
" 16, "	15.40	.0649	200.29	422.79	" " "	15.55	.0643	198.38	424.73	" 27, "	15.77	.0634	186.21	401.10
" " "	15.49½	.0645	150.13	316.15	Nov. 5, "	16.56	.0604	140.48	324.80	" " "	15.77	.0634	195.59	427.49
" 25, "	15.68½	.0639	199.00	424.08	" 8, "	17.32½	.0577	179.82	443.26	Nov. 9, "	17.16½	.0583	155.53	329.75
" 30, "	17.29	.0578	180.19	442.89	" 19, "	16.71½	.0598	186.38	436.70	" 11, "	17.42	.0575	178.84	444.24
Nov. 9, "	16.48	.0608	150.29	344.17	Dec. 17, "	16.43	.0609	150.47	343.99	" 23, "	17.03½	.0623	194.29	228.79
Dec. 2, "	16.48	.0608	152.98	350.31	" 16, "	16.73	.0598	150.42	352.87	Dec. 20, "	17.03½	.0587	145.13	349.33
" " "	16.79½	.0595	180.49	425.78	" " "	16.73	.0598	181.19	425.08	" " "	17.03½	.0587	147.72	555.57
" 6, "	15.73½	.0598	181.97	427.10	" 29, "	17.08	.0585½	178.30	430.77	" " "	17.03½	.0587	177.95	228.32
" 18, "	15.83½	.0594	346.86	825.77	Jan. 4, 1921	17.21	.0581	341.26	833.37	Jan. 3, 1921	17.09	.0585	176.19	430.68
" 23, "	15.83½	.0594	174.43	412.88	" " "	17.21	.0581	170.63	416.68	" 18, "	16.47	.0607	356.60	818.03
" 25, "	17.07½	.0586	171.98	415.33	" 19, "	16.45	.0606	178.51	406.80	" " "	16.47	.0607	178.30	409.01
Jan. 3, 1921	17.07½	.0586	188.91	462.22	" " "	16.45	.0608	196.09	455.04	" 25, "	14.37	.0696	204.05	382.98
													224.47	426.66
			45,724.65	54,030.82				$ 43,913.90	$ 55,841.77				$ 43,700.56	$ 56,054.91

85

Amended Answer.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AMERICAN TOBACCO COMPANY,
Plaintiff,
against
COMPAGNIE GENERALE TRANSATLANTIQUE.

L. 38 - p. 219.

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The defendant, appearing by Joseph P. Molan, its attorney, answers the complaint of the plaintiff herein and alleges:

FIRST: The defendant admits the allegations contained in paragraphs "1" and "2" of the complaint.

SECOND: Answering the allegations contained in paragraphs "3", "4" and "5" of the complaint defendant admits the hearing before the U. S. Shipping Board, Docket No. 13, on the charges of the plaintiff against the defendant, and the making of its reports as set forth in the paragraphs referred to, but upon information and belief the defendant alleges that the said U. S. Shipping Board was without jurisdiction to hear the cause, was without jurisdiction to judge between the plaintiff and the defendant, and was without jurisdiction to enter any of the orders or decrees referred to, or to make any of the

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rulings attempted to be made by it, and was without jurisdiction to amend any ruling, order, decree or finding which it had attempted to make in the cause, or to direct that the plaintiff was entitled to recover anything from the defendant, or to direct the defendant to pay the same, and that in said respect the U. S. Shipping Board, Docket No. 13, did not proceed legally in the premises.

Except as hereinbefore admitted the defendant
89 denies the allegations of paragraphs "3", "4" and "5" of the complaint.

THIRD: Answering the allegations contained in paragraphs "6" of the complaint the defendant admits the carriage of the goods referred to therein, the payment of freight charges by the plaintiff to the defendant, that such charges were made and paid on a fixed basis of five francs to the dollar, the carriage of similar goods and the acceptance of payment in advance for the carriage of said goods at the current rate of ex-
90 change. Defendant admits that "Exhibit D" thereof correctly sets forth the details of the shipment, freight charges, etc., admits the finding of the U. S. Shipping Board, Docket No. 13, denies that the rates charged to other shippers were unduly preferential or that the rates were unjustly discriminatory of the plaintiff, or were in violation of Section 16 and 17 of the Shipping Board Act of 1916 and alleges that the said U. S. Shipping Board, in making its finding, failed to take into consideration the fact of prepayment of insurance, effected at its own cost by the

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carrier, the cost of trans-shipment of money and other elements which entered into the rate fixed to prepaid shippers.

FOURTH: Answering the allegations contained in paragraph "7" of the complaint defendant denies that the facts as found by the U. S. Shipping Board are true and correct; that copies of the reports and order of the Board, "Exhibits A. B, and C", were served on the defendant, and that the defendant has not paid the amount so directed to be paid by the U. S. Shipping Board, and denies all the other allegations in said paragraph "7" of the complaint contained, and alleges that the U. S. Shipping Board was without jurisdiction in the premises.

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FIFTH: Answering the allegations contained in paragraph "8" of the complaint defendant admits that plaintiff made the shipment and paid the sum of $54,030.82 as freight rates to the defendant, and denies each and every other allegation contained in said paragraph "8" of the complaint.

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SIXTH: Further answering the defendant alleges that the contracts for the shipment of the said commodities on the ships of the defendant were made and entered into in the Republic of France, after due advertisement and notification to the plaintiff of the rates to be charged, and after due offer to the plaintiff of the same rates guaranteed to shippers of similar commodities for prepaid freight, but that the plaintiff elected

94 to ship its commodities at the published rate fixed for commodities of its class, and of a similar class, on the collect basis.

SEVENTH: Further answering the defendant denies that at the time alleged in the complaint, or at any other time, it shipped commodities of the class similar to that of the complainant on any of its ships for any person, firm, corporation or association, at a rate lower than the rate
95 which it charged to the plaintiff, and the defendant alleges that the U. S. Shipping Board, Docket No. 13, did not act legally in finding to the contrary thereof.

AS AND FOR A FIRST SEPARATE AND DISTINCT DEFENSE TO THE CAUSE OF ACTION ALLEGED IN THE COMPLAINT.

EIGHTH: The defendant alleges that this Court has not jurisdiction of the subject matter of this action.

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AS AND FOR A SECOND SEPARATE AND DISTINCT DEFENSE TO THE CAUSE OF ACTION ALLEGED IN THE COMPLAINT.

NINTH: That each and every of the shipments of the goods referred to in the complaint, and in the reports of the U. S. Shipping Board, and in "Exhibit D", referred to in the complaint herein, were made under contracts of affreightment duly made and executed in writing in the Republic of France by and between the plaintiff and the defendant, and were duly delivered in the

Republic of France, and that each and every of the said shipments were made in the Republic of France, and that the said contracts were legally made, executed and delivered under and in pursuance of the law of the Republic of France, and the said contracts are binding under and in pursuance of the law of the Republic of France, and are, and were at all times from and after the making of the said contracts, valid and binding upon the parties thereto and in full force and effect under and in pursuance of the law of the Republic of France, and the said shipments were each and every of them made in pursuance of and in accordance with the law of the Republic of France.

AS AND FOR A THIRD SEPARATE AND DISTINCT DEFENSE TO THE CAUSE OF ACTION ALLEGED IN THE COMPLAINT.

TENTH: That the contracts of affreightment hereinabove referred to are valid and enforcible in the courts of the United States, and the courts of the respective States of the United States.

AS AND FOR A FOURTH SEPARATE AND DISTINCT DEFENSE TO THE CAUSE OF ACTION ALLEGED IN THE COMPLAINT.

ELEVENTH: The defendant alleges that the carriage of the goods referred to in the complaint herein, and in the reports of the Shipping Board, referred to in the complaint herein, and in "Exhibit D", annexed to the complaint here-

in, were all performed in French territory upon ships of the Republic of France, carrying the flag of the Republic of France, and in accordance with valid contracts of affreightment or Bills of Lading, therein and whereby it was agreed by the shipper and the ship owner, the defendant herein, that the laws of the Republic of France should govern the interpretation and construction of the said contracts of affreightment, and the performance of the contract of affreightment therein provided for.

AS AND FOR A FIFTH SEPARATE AND DISTINCT DEFENSE TO THE CAUSE OF ACTION ALLEGED IN THE COMPLAINT.

TWELFTH: That the Acts of Congress of September 7th, 1916, Chap. 451, p. 39 Stat. 728, *et seq.*, of July 15, 1918, Chap. 162 Stat. 40, p. and of June 5, 1920, Chap. 250, 41 Stat. 989, known as the "United States Shipping Board Act and the Acts Amendatory Thereof and Supplemental Thereto" as interpreted in the instant case and controversy between the plaintiff and the defendant herein, are repugnant to and in contravention of the statutes of the United States, and more particularly the Fifth Amendment to the Constitution of the United States and the said statutes as herein interpreted, deprive this defendant of its property without due process of law, as more particularly mentioned and provided in Sections 238 and 241 *et seq.* of the United States Judicial Code.

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WHEREFORE defendant demands judgment that the complaint herein be dismissed upon the merits with costs.

JOSEPH P. NOLAN,
Attorney for Defendant,
60 Broad Street,
New York City.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

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GEORGES DE VILLENEUVE, being duly sworn, deposes and says:

That he is Assistant Secretary of the Compagnie Generale Transatlantique, the defendant in the above-entitled action. That he has read the foregoing amended answer and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true. That the sources of Deponent's information and the grounds of his belief are statements made to him by employees of the defendant.

105

That the reason this verification is made by deponent and not by defendant is that defendant is a foreign corporation, organized and existing under the laws of the Republic of France, and no officer or director thereof is within the State of New York, and deponent is, as aforesaid the Assistant Secretary thereof and, therefore, makes this verification on its behalf.

106 *Defendant's Bill of Particulars.*

That deponent is duly authorized to make the within answer, and generally to make any and all answers, complaints, claims, declarations, verifications and acts for said Compagnie Generate Transatlantique in the premises that may be necessary for the transaction of its business herein.

(Signed) Georges de Villeneuve.

Sworn to before me this
107 1st day of November, 1927.

Edward J. Garety,
Notary Public, Bronx County,
Certificate filed in New York County.

Defendant's Bill of Particulars.

UNITED STATES DISTRICT COURT,

Southern District of New York.

108

American Tobacco Company,
Plaintiff,
against
Compagnie Generale Transatlantique,
Defendant.

The defendant submits this its Bill of Particulars of the freight contracts entered into between

Defendant's Bill of Particulars. 109

the plaintiff and the defendant, and referred to in the separate defenses of the amended answer of the defendant:

(1) For each and every of the shipments enumerated in "Exhibit D", mentioned in the complaint, a Bill of Lading, or contract of affreightment, was entered into between the plaintiff and the defendant, which was uniform and identical in each case. A copy of one of such Bills of Lading, and a translation of the same, is annexed 110 hereto.

(2) The only difference between the Bills of Lading issued for each and every of the shipments enumerated in "Exhibit D", mentioned in the complaint, and the copy of the Bill of Lading annexed hereto in the name of the port from which such shipments were made, the number of cases or packages of goods, the mark on the goods, the weight or cubic contents, the nature of the contents and the amount of 111 freight paid.

(3) Bills of Lading for each shipment will be produced upon the trial of the action.

(4) Each of said Bills of Lading gives the name of the shipping agent and the name of the American Tobacco Company as consignee.

(5) The name of the agent shipping the goods from Bordeaux in each instance where Bordeaux is the shipping port as disclosed

112 *Defendant's Bill of Particulars.*

on "Exhibit D" is T. de Vial & Fils, 35-37 Avenue de Boutant, and/or Societe Anonyme d'Exploitation des Papetries, L. Lacroix Fils.

(6) The name of the shipper shipping the goods enumerated on "Exhibit D", as coming from Havre, France, is De la Rancherays & Cie., and Societe Anonyme des Papetries de Manduit.

113 Dated, October 29th, 1927.

Yours, etc.,

JOSEPH P. NOLAN,
Attorney for Defendant,
60 Broad St., New York City.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss.:

114 GEORGES DE VILLENEUVE, being duly sworn, deposes and says:

That he is Assistant Secretary for the United States and Canada of the Compagnie Generale Transatlantique, the defendant herein. That he has read the foregoing Bill of Particulars and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. That the sources of deponent's information and the grounds of his belief

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are statements made to him by employees of the defendant.

That the reason this verification is made by deponent and not by defendant is that defendant is a foreign Corporation, organized and existing under the laws of the Republic of France, and no officer or director thereof is within the State of New York, and deponent is, as aforesaid, the Assistant Secretary thereof and, therefore, makes this verification on its behalf.

That deponent is duly authorized to make the within Bill of Particulars, and generally to make any and all Bills of Particulars, answers, claims, declarations, verifications and acts for said Compagnie Generale Transatlantique in the premises that may be necessary for the transaction of its business herein.

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(Signed) Georges de Villeneuve.

Sworn to before me this
31st day of October, 1927.

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Edward J. Garety,
Notary Public, Bronx County 135,
Certificate filed in New York County 533.

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Extract From the Minutes.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AMERICAN TOBACCO COMPANY,
Plaintiff,
against
COMPAGNIE GENERALE TRANSATLANTIQUE,
119
Defendant.

1926.

Sept. 24 Filed Praecipe and issued summons.

Oct. 1 Filed summons, complaint and affidavit of service and exhibits.

Dec. 15 Filed note of issue and notice of trial for January 1927 term.

1927.

Feb. 5 Filed answer.

120

Oct. 24 Filed note of issue motion for amended answer returned 10/25/27.

" 26 Filed affidavit and order to show cause—Memo. End. for amended answer—Referred to Judge Mack.

Oct. 28 Filed order for amended answer as indicated—Mack, J.

Nov. 3 Filed amended answer.

Nov. 3 Filed bill of particulars.

Nov. 4 Witnesses for Plaintiff 1—Exhibits 2. Witnesses for Defendant 1—Exhibits 3.

Extract From the Minutes. 121

At close of Plaintiff's case Defendant's Attorney moves to dismiss and for a direction of a verdict. Decision Reserved. At close of entire case, Plaintiff's Attorney moves for a direction of a verdict. Defendant's Attorney moves for a direction of a verdict and if verdict is against Defendant, then to go to Jury on certain issues. Denied. Exception. Court directs verdict for Plaintiff for $78,- 122
230.09.—Exception for Defendant. Defendant's Attorney moves to set aside the verdict. Denied. Exception. (No counsel fee.) 30 days stay and 60 days to make a case. Term extended, Winslow, J.

Nov. 25 Filed bill of costs, extract of minutes and Judgment #24478 in favor of Plaintiff for $78,260.09.

1928.

Jan. 7 Filed petition and order allowing writ 123
of error.

" 7 Filed assignment of errors and writ of error.

" 7 Filed bond on appeal #78280—approved, Goddard, J.

Jan. 10 Filed Citation to C. C. A. Ret. Feb. 1, 1928.

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Judgment.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AMERICAN TOBACCO COMPANY, Plaintiff, against COMPAGNIE GENERALE TRANSATLANTIQUE, Defendant.	L. 38—p. 219.

125

The issues in this action having been duly brought on for trial before Judge Francis A. Winslow and a jury, at a Trial Term of this court, held on the 21st day of November, 1927, at the court house, in the County and City of New York, and all the parties appearing by counsel, and the issues having been duly tried, and a verdict for the plaintiff having been duly rendered
126 by direction of the court on the said 21st day of November, 1927, for the sum of Seventy-eight thousand two hundred thirty and 09/100 ($78,-230.09) Dollars, and the costs of said plaintiff having been duly taxed at $30.00 Dollars:

Now on motion of Jonathan H. Holmes, attorney for said plaintiff, it is

ADJUDGED, that the plaintiff The American Tobacco Company recover of the defendant Compagnie Generale Transatlantique the sum of

Judgment. 127

Seventy-eight thousand two hundred thirty and 09/100 ($78,230.09) Dollars, so found by the jury, together with $30.00 Dollars costs as taxed, amounting in all to $78,260.09 Dollars, and have execution accordingly.

Judgment signed this 25th day of November, 1927.

ALEX. GILCHRIST, JR.,
Clerk. 128

129

130

Bill of Exceptions.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AMERICAN TOBACCO COMPANY,
Plaintiff,

vs.

COMPAGNIE GENERALE TRANSATLANTIQUE,
131 Defendant.

Before:

HON. FRANCIS A. WINSLOW, J.,
and a Jury.

New York, November 21, 1927.

APPEARANCES:

JONATHAN H. HOLMES, Attorney for Plaintiff,
132 John David Lannon and Clinton Robb, of Counsel.

JOSEPH P. NOLAN, Attorney for Defendant.

A jury was duly empanelled, examined and sworn.

OPENING FOR PLAINTIFF.

Mr. Lannon: May it please the Court and gentlemen of the jury. This action was brought by the American Tobacco Company, the plain-

tiff, against the French Line, Compagne Generale Transatlantique—my French is not very good but that is approximately the pronunciation —to recover damage for discrimination against it, the amount of damages claimed being approximately $54,000, and it arose by reason of our claim, which is this:

The American Tobacco Company imported from France between April 7, 1919, and January 25, 1921, certain shipments of cigarette paper in rolls or bobbins from which cigarettes were to be manufactured, also cigarette paper in the form of cigarette books out of which the cigarette smoker rolls his own cigarettes. They bought them over there from the manufacturers and brought them over here. They were brought over here, or shipped over here, to the American Tobacco Company as consignee, by French manufacturers.

Our contract provided that we should pay for them f. o. b. on board ship in France, at Havre or Bordeaux, and they were shipped to us. They were shipped collect—that is, the charges were to be paid at this end.

Our competitors were doing exactly the same thing, bringing in shipments of this same material from France, shipping them by the same French line. They paid in France—or they prepaid the shipments in France. The result of this was that they charged us at the rate of five francs to a dollar when the goods came over here, but they collected from our competitors freight at the current rate of exchange, where it was prepaid over there. In other

words, we paid a hundred thousand dollars, approximately, in freight to the French Line, when our competitors, on the basis that they were paying, would only have paid about forty-six thousand dollars, the difference being made up because we were paying five francs to the dollar and our competitors were paying at the rate of from eight to sixteen francs to the dollar.

During this time we brought in some 279 shipments, and they were brought by different boats,
137 and it was the aggregate of the amounts due on those shipments, that we paid on those shipments, which amounted to approximately a hundred thousand dollars.

In cases of this kind, where there are questions of discrimination and of freight rates that arise, the Government or Congress has passed an Act known as the Interstate Commerce Act, creating the Interstate Commerce Commission, and the Interstate Commerce Commission under the law was charged with the duty of determining whether or not one or another shipper
138 was discriminated against. Later the Shipping Board Act was passed, and the Shipping Board Act, while we always think of it as having been made or passed with the idea of building a merchant marine, has as one of its functions to pass upon questions of discrimination in freight rates, because the Shipping Board Act provides that no carrier shall discriminate in favor of one shipper as against another shipper. And this Act provides that the Shipping Board shall examine into any questions of discrimination, and that if they find that a shipper has been discrim-

inated against they will then make a finding, which is known as a reparation award, which is to assess for and repay the shipper who has been discriminated against the amount of money that he has lost as a result of that discrimination.

When we found out that we had been grievously discriminated against in this way we brought a suit or proceedings before the Shipping Board and they took testimony, had hearings, a number of hearings, and finally decided that the French Line, or the defendant here, should pay to the American Tobacco Company the sum of fifty three thousand and some odd dollars, with interest from the times when they had made these overcharges—not overcharges, but these collections of freight from us.

That Act which I have spoken of provides that in case the order of the Board directing the reparation payment is not complied with within ninety days the shipper or person who is entitled to the repayment or reparation award may bring suit in some of the courts—this court—against the carrier for the amount of that award; and the Act also provides, as his Honor will charge you or tell you, I think, that the report and finding of the Board is prima facie evidence of the facts that are therein contained.

We are here before you to ask you to give us the damages that the Shipping Board has already found we are entitled to, amounting to approximately $54,000 with interest, which runs it up somewhere around $75,000.

142 *Bill of Exceptions.*

Mr. Nolan: If your Honor please, I move on the opening statement of counsel to the jury, and upon the complaint which is before the Court, for a dismissal of the complaint and a direction of a verdict in favor of the defendant, upon the ground that this court has not jurisdiction of the subject matter comprised in the complaint, upon the ground that the action is an attempt to take from this defendant its property without due process of law, within the Fifth Amendment to
143 the Constitution of the United States, in that it is an attempt to declare invalid a contract legally entered into in a foreign country and which was fully executed and carried out prior to the institution of the proceeding.

The Court: Motion denied.

Mr. Nolan: Exception.

OPENING FOR DEFENDANT.

144 Mr. Nolan: May it please the Court and gentlemen of the jury. In this case the defendant, the French Line, appears and not only asserts that this Court has no jurisdiction of this particular matter but that the Shipping Board did not have jurisdiction of the circumstances involved in this case. We will show you by the record of the Shipping Board, the testimony which was offered there, so that you can peruse the same and determine upon the facts in the case whether or not this plaintiff is entitled to a verdict against us.

We shall show you that this steamship company, a foreign steamship company organized and created under the laws of a free and independent country, France, was engaged in the carrying of cargo and passengers from France to the United States on ships carrying the flag of the Republic of France, and therefore territory of the Republic of France. We will show you by the testimony that has already been taken that during the war the price of freight rates as well as labor, insurance, coal and the expenses of running ships had reached a materially higher point than it ever had before; that by reason of the difficulties created by war conditions, the ships of this carrier as well as of all other carriers were running the constant risk of being sunk at sea. The shipowners, naturally, as well as cargo owners—that is, such cargo owners as were careful business men—took every precaution they could to protect their property; and the ship owner, in order to treat everybody fairly and at the same time minimize his own losses, created two rates which we shall establish before you for the same class of goods.

Of course, the theory of the Shipping Board and of my learned friend is that the French Line discriminated against his individual client in that it carried the same class of goods on the same ship under the same conditions, but exacted the higher rate from one than it exacted from the other. We intend to show you the difference.

In the testimony that will be produced before you here we will show you that during the

period of the latter part of the war and immediately after it this defendant company lost seventy ships between Havre and New York, that were sunk by reason of war conditions, and we will show you by the testimony, as I mentioned a moment ago, that the cost of everything was materially higher.

So it created these two rates. It said to the shipper of goods, "Here is our tariff sheet, here is the rate for cigarette papers, here is the rate
149 for hides, here is the rate for everything, and the rate shall be so many francs per ton", but at the end of that rate sheet it says, "Important Notice: Regarding the invoices accepted with freight payable at destination the rates will be converted into dollars at the fixed rate of five francs to the dollar."

Now when the shipper paid his freight money for the carriage of his goods in France, if it was an American concern it first had to send its money from New York to France to pay for it, and that cost them something; when he paid his
150 freight money to the ship owner and he had his bill of lading—that is, paid it in advance and got his bill of lading and put his goods on those ships—he had to insure his goods at two rates, the general ocean carriage rate and the enormous war risk rate of insurance that was carried.

When the American Tobacco Company elected to send their goods freight payable at destination they did not as I have said, have to pay something to send their money, one per cent, to France to pay in advance. They did not have

to insure their cargo, because that was up to the ship under the terms of the contract to deliver the cargo safely. They did not have to insure their cargo at the enormous rates that existed. And the ship owner in turn, in collecting the money at New York, had to pay to send that money to France, because that is where the service was inaugurated.

We say to you that this evidence will show that this company did not carry the goods of the competitor of the American Tobacco Company on its ships under the same conditions as it carried the American Tobacco Company's. That will be our defense, plus the questions of law which we allege—that we have made a contract in France between two individuals, the contract was valid in France, it was carried out completely, we took the goods on our steamers, we brought them to New York, we delivered them safely without any diminution, without any damage to them, they were accepted, and we say that being done, our contract as created over there under those peculiar conditions cannot be attacked here in this court, and we be accused of having discriminated.

If we establish those facts we shall ask you for a verdict in favor of the defendant French Line.

PLAINTIFF'S CASE.

Mr. Lannon: I offer in evidence a certified copy of the report and findings and orders, sup-

plemental report findings and order and final order of the Shipping Board.

Mr. Nolan: That is objected to as incompetent unless accompanied by the entire record before the Board. The Shipping Board is a court of limited jurisdiction, created by statute, and this court cannot assume that it had jurisdiction of the subject matter; the jurisdiction must be pleaded and proved, and the judgment itself is a mere fiat of that court and is not of itself proof
155 of its jurisdiction.

The Court: I think the sole inquiry of this court in this case is whether or not there was any evidence to support the finding of the Board. The Court is not concerned with whether this Court might arrive at the same or a different conclusion upon the facts, but if there was evidence to sustain the finding of the Shipping Board—I mean substantial evidence, not a scintilla of evidence—then I think that ends the case. That is, of course, subject to whether we get past the constitutional question and contrac-
156 tual question. How can I determine without the evidence and the record before me, on the mere findings?

Mr. Lannon: The statute provides that the report, the supplemental report and findings of the Board, shall be prima facie evidence of the facts. In all the interstate commerce cases they have submitted those to make out the prima facie case. If the defendant sees fit to introduce the record in evidence and attempts to attack the prima facie case made out by the findings of the Board, why, the defendant is at lib-

erty to do so. But it is up to the defendant to overcome the prima facie case made out by the findings and by the report and order of the Board

The Court: In other words, you think the burden immediately shifts?

Mr. Lannon: The burden immediately shifts, and that is the holding of all of those cases in the Supreme Court.

(A discussion ensued between Court and counsel not reported.)

The Court: This paper that you have contains the findings and the order of the Board?

Mr. Lannon: It contains the finding and order of the Board.

The Court: I will overrule the objection and it will be received, and exception noted.

Mr. Nolan: May I have an exception to that?

The Court: Yes.

Marked Exhibit No. 1.

The Court: I am not looking at these, but of course I assume counsel is correct when he states that that is what it is.

Mr. Nolan: It is admitted as part of his prima facie case, and your Honor is not ruling as to the constitutionality or the question of jurisdiction?

The Court: That is right.

Mr. Lannon: I offer in evidence certificate from the office of the Secretary of State of New

160 York, authorizing the French Line to do business in New York.

Mr. Nolan: No objection.

Marked Exhibit No. 2.

Mr. Lannon: I now ask the defendant to admit service upon it of the report of the Shipping Board, decided July 17th, 1925, and the supplemental report and order dated December 29th, 1925, and the order of the U. S. Shipping Board
161 dated July 27th, 1926, Docket No. 13, American Tobacco Company vs. Compagnie Generale Transatlantique—the French Line—these being the papers of which Plaintiff's Exhibit No. 1 are certified copies.

Mr. Nolan: That is objected to as incompetent, irrelevant and immaterial, the report itself not being binding in any way upon the defendant in this action, as the relations between the plaintiff and the defendant were of a contractual nature, entered into in the Republic of France,
162 were fully performed and carried out between the parties prior to the making of the report; and upon the ground that the report itself tends to deprive the defendant of its property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States.

Mr. Lannon: Do I understand that you concede the fact but object to its admission in evidence?

The Court: Its relevancy or its competency?

Mr. Nolan: The defendant concedes that copies of the reports were sent to it by the Shipping Board.

Alexander H. White—For Plaintiff—Direct. 163

The Court: The objections are made as outlined, and the rights of counsel are reserved. Objections overruled and exceptions noted to the rulings.

Mr. Lannon: I ask the same admission from the learned counsel for the defendant, as to the fact that no payment of this award has been made by the French Line.

Mr. Nolan: That is admitted, that the French Line has not paid the award—and it hopes not to have to. 164

Mr. Lannon: I hoped not to bother your Honor with it, but they had denied it inadvertently I think in the pleadings.

Alexander H. White, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination by Mr. Lannon: 165

Q. Mr. White, what is your occupation? A. Assistant Manager of the Export Department, American Tobacco Company.

Q. Mr. White, did you at my request make a calculation of the interest on these various amounts paid as freight by the American Tobacco Company to the French Line? A. Yes, sir; I did.

The Court: What is the amount of the principal of that—

166 *Alexander H. White—For Plaintiff—Direct.*

Mr. Lannon: The amount of the principal was $54,030.82, and interest thereon—

Q. Have you calculated the interest thereon at the rate of six per cent per annum from the respective dates of payment by the American Tobacco Company of the charges as specified in Exhibit D to the complaint herein? A. Yes, sir; that is the best I could do.

167 Q. Will you please state what the interest amounted to?

Mr. Nolan: If your Honor please, I object to this as incompetent, irrelevant and immaterial upon the grounds already stated in my previous objection, and upon the ground that this is an attempt to assess a penalty upon the defendant for a service that has already been completed and finally determined as between the parties, the service of carrying the goods.

168 The Court: What was the finding of the Shipping Board?

Mr. Lannon: The finding of the Shipping Board was that, "It is ordered that the respondent Compagnie Generale Transatlantique pay unto the complainant American Tobacco Company on or before ninety days from the date hereof, as reparation on account of unlawful transportation charges exacted, the sum of $47,856.90, with interest thereon at the rate of"—

The Court: There was a supplemental order correcting the amount to $54,000?

Mr. Lannon: That is correct.

The Court: What I want to know is, did they award interest?

Mr. Lannon: Yes, they did.

The Court: Let me hear the language of their award.

Mr. Lannon: This is their award, "That the said report and order of the Board of December 29, 1925, is modified to award as reparation on account of unlawful transportation charges exacted, the sum 170
of $54,032.82, with interest thereon at the rate of six per cent per annum computed from the respective dates of payment by complainant of said charges, as specified in claim No. 24 of amended Exhibit A of the record herein."

Mr. Nolan: I press the objection. This is an attempt to assess us with damages for a service already completed, and on the grounds already stated. On that ground I press the objection.

The Court: Objection overruled with 171
exception.

Mr. Nolan: Exception.

A. The computation is made on these various amounts of freight paid, which total $54,000, approximately, from—

The Court: And what is the aggregate amount of the interest to date, or to whatever date you have computed it?

The Witness: The aggregate amount of

172 the interest to date, as I find it, is $24,-197.27. That is the amount which we arrived at on the multiplying and adding machine.

The Court: How many years has this award run?

Mr. Nolan: April 19, 1919.

The Court: Was this proceeding begun within the statutory period?

Mr. Lannon: Yes, sir.

173 Mr. Nolan: It was begun within the two years; yes, sir.

The Court: The total is $78,230.09 with principal and interest added, is that correct?

Mr. Nolan: Your Honor understands that my admission that it is brought within the two years is not an admission against our interest, but merely that it was brought within two years from the first shipment, which is part of the terms of the shipping document.

174 The Court: Oh, yes, all rights of the defendant are reserved on that.

Mr. Lannon: Do you wish to cross examine?

Mr. Nolan: No, no cross examination.

(Witness excused.)

Mr. Lannon: The plaintiff rests.

Mr. Nolan: If your Honor please, on the record I move to dismiss the complaint and for the direction of a verdict in favor

of the defendant, upon the ground that it appears that this action is an attempt to assess a penalty and damages upon this defendant upon a contract or series of contracts fairly made and entered into in a foreign country, and duly completed between the parties; upon the ground that the Shipping Board has no jurisdiction of such a subject matter, and upon the ground that it is an attempt to give extra territorial effect to a law of the United States so as to invalidate a contract fairly made and entered into between the parties in a foreign country; that it constitutes the taking of the property of the defendant without due process of law within the meaning of the Fifth Amendment of the Constitution of the United States.

On the law as it stands and as I have submitted it to your Honor, where, as the Supreme Court of the United States has said in the Gebhardt case in 109 U. S., one enters into contractual relations in a foreign country, such person is assumed to subject himself to the laws of that foreign country. Bills of lading, contracts of affreightment were all entered into in France, 279 of them, running over a period of time, as counsel said in his opening address from January 21, 1919, until the 1st day of April, 1921. Each was a separate, distinct and completed contract. There is no claim that we did not deliver their goods, no claim that we damaged their goods in any way, no claim that we fell

down on our contract in any way, absolute satisfaction with the contract and its performance in every way, except that they say years after the event, "We will take this statute of the United States, we will project it into the Republic of France, and we will there say that what we did, though valid in the Republic of France and in accordance with the laws of the Republic of France, now is invalid."

179 I think, sir, that the plaintiff's complaint should be dismissed and that there is no merit in any such contention. The Supreme Court of the United States has repeatedly held that no such extra territorial jurisdiction exists. As my associate has just suggested, the intention of the parties as to what laws shall apply is always something to be considered, but in the absence of evidence upon it, where it is made in a foreign country between people competent to contract then the law of that

180 country must necessarily apply.

I move for a dismissal of the complaint and the direction of a verdict on the further ground that the nature of the remedy sought in this action and sought before the Shipping Board is in the nature of a penalty that was never in contemplation in this contract, and that in this action it is an attempt to recover a series of penalties, in fact 279 in all; that this court has no such jurisdiction and that this defendant will be damaged thereby.

181 The Court: I will reserve decision upon the motion to dismiss until both sides have rested.

Mr. Nolan: And for the record I take an exception.

The Court: Yes.

DEFENDANT'S CASE.

182 Mr. Nolan: Mr. Lannon has agreed with me that he will stipulate that these goods were carried on ships carrying the flag of the Republic of France.

Mr. Lannon: Merchant ships.

Mr. Nolan: Yes, merchant ships. I offer in evidence a bill of lading and a translation of the same. It is between M. Daville of Bordeaux and the French Line, to carry certain goods on the steamship "Chicago" to the American Tobacco Company, 111 Fifth Avenue, New York.

183 It contains a description of the goods, the marks and numbers, and the freight rate. I should say it reads, "Loaded by Mr. T. Daville and Sons on the steamship 'Chicago' to be transported to New York and there to be delivered to the American Tobacco Company, 111 Fifth Avenue".

Mr. Lannon: I object to it on the ground it is immaterial.

The Court: Objection overruled with exception.

(Marked Exhibits A and B.)

The Court: There is no contention, I assume, that the translation is not a fair translation?

Mr. Lannon: No, I do not, if Mr. Nolan assures me that is so. The point of my objection is this—that I think they ought to have put in evidence before the Shipping Board on this point and not bring it in at this time if it differs from any evidence that is before the Board. If it does not differ from any evidence before the Board it is only cumulative and is of no value.

The Court: It may be cumulative, but as it is the basis of the contract, and as that is one of the grounds urged by counsel for the defendant, that the contract was made in France and performed there, it may be a vital question. So I have admitted it, although it must be cumulative because I assume it was before the Shipping Board as part of the case, was it not?

Mr. Lannon: One contract is—one copy of it.

Mr. Nolan: They are all the same.

The Court: They are all the same. Of course, I am not going to receive here any additional evidence, additional to that which was before the Shipping Board. I assume counsel understood that—aside from the fact that it may be necessary to make out this particular case. Am I correct? I want to know whether this was before the Shipping Board.

Mr. Nolan: One copy of the bill of lad-

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ing, all of them being similar, as Mr. Lannon will admit.

The Court: The ruling stands. You understand my ruling, gentlemen; I am not going to try this case *de novo,* and by receiving this I am not starting out with the proposition that I am going to try it *de novo* by witnesses, accountants and others.

Mr. Lannon: I want to make a further objection to its admission in evidence, that 188
if there is any provision in the contract that is contrary to the provisions of the Shipping Board Act it is void and therefore incompetent, immaterial and irrelevant.

The Court: Again I repeat that I assume this is merely cumulative and that it was before the Shipping Board.

Mr. Lannon: My objection does not go to the fact that it is a proper copy of a bill of lading.

The Court: If it was before the Ship- 189
ping Board I assume the Shipping Board passed upon its legal significance.

Mr. Lannon: That is what I say.

Mr. Nolan: Will you stipulate, in order not to involve the record, Mr. Lannon, that each of the other bills of lading for the other 278 shipments, was in the same form?

Mr. Lannon: I think you better state, if there was any difference, just what the difference amounted to.

190

The Court: I assume the differences were merely in the marks on the merchandise, the quantities or description. They were in the description of the contract. The contracts, whatever they were, I assume were the same in each instance.

Mr. Nolan: They are the same in each instance with the exception of Article II, which in two of the bills of lading contained less words than contained in this

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one, but which do not affect the issues in this case.

The Court: Is that understood?

Mr. Lannon: That is understood. May I also make the point, for the record, that these bills of lading are not binding upon us, as they were sent to us by people over there from whom we purchased goods. We were the consignees, in other words; we were neither the consignor nor the shipper.

The Court: Again I ask counsel whether

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or not that particular question was before the Shipping Board.

Mr. Lannon: It was, yes, I understand.

The Court: For that reason I will rule on the record when both sides have completed it.

Mr. Nolan: As a matter of fact, it would make little difference, because as assignees of the bill of lading, if they are, or as consignees in it, they are bound by it just the same; so it would make no differnce one way or the other.

193

The Court: I think that is so.

Mr. Lannon: I should like to argue it if your Honor thinks it worth while. I take it that is not the law.

Mr. Nolan: If your Honor please, without waiving the exception which I took at the end of the plaintiff's case, I offer a certified copy of the record before the Shipping Board attached to which, but not included in it and which should have been included in it, are three rate sheets of the

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French Line which were before the Board but not in the record.

The Court: Mr. Lannon, I take it there is no objection to having this in evidence?

Mr. Lannon: As a matter of fact, I produced it at Mr. Nolan's request.

The Court: This additional document I assume—

Mr. Nolan: Mr. Lannon gave me that also; it is a photostatic copy of an exhibit with the Shipping Board.

The Court: In other words, it is sup-

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posed to be the complete record of the case before the Shipping Board?

Mr. Nolan: Yes.

Mr. Lannon: Except that it does not contain all the exhibits, I understand.

Mr. Nolan: But which exhibits, I take it, are not necessary here. It would take a truck to bring them down here, and they do not aid but rather confuse.

The Court: It is substantially the record necessary for determination by the Shipping Board.

196

Mr. Nolan: Yes, sir.

The Court: Is that so?

Mr. Lannon: What I do not want to do—to be perfectly frank with your Honor—I do not want to stipulate that all of the evidence that the Board had before it is here; because Mr. Nolan raised this question, which he did not raise in his pleading, the one that your Honor suggested, that there was no evidence before the

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Board to justify a finding. Now we claim that there was evidence before the Board to justify every finding. We think that if Mr. Nolan takes the contrary view he ought to produce the entire record before the Board, so as to show that there was not any justification for it. He did not raise that question in his pleadings, nor did he raise it in his amended pleadings. The only question that he has raised, as I see the pleadings, are two: First, the jurisdiction of the Board and, secondly, of

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this court. Those are the things which I think we have to meet here. I do not think we have got to meet under the pleadings here the question whether or not there was anything before the Board to justify a finding, because I think that is out of this case because not raised by the pleadings. If it should be raised by the pleadings, then I object to it. I will argue both before your Honor and before an appellate court that unless your Honor has before you all of the evidence that was before the

Shipping Board you cannot say that the Shipping Board did not have the evidence before it sufficient to sustain the findings. 199

I have told Mr. Nolan that when he spoke to me about this matter, because I said I do not want you to be surprised when we get into court. I am going to urge that because it is one of our important points in the case—that we claim that there was evidence before the Board to justify every finding, and if Mr. Nolan 200
thinks to the contrary or believes to the contrary or intends to raise that point, he should first plead it and come here to show that all the evidence before the Board was not before the Court, or he should not ask the Court to make that holding.

Mr. Nolan: That is—what shall I say—rather a surprise to me. Mr. Lannon told me last week that if I were going to offer this record he wanted every exhibit and everything there was in the case. I said all 201
right, and then I proceeded to subpoena the Shipping Board and was informed that they would not produce their records here. This morning when I mentioned that fact here in court and spoke to Mr. Lannon he said rather than have the case go over he had a certified copy which I could have, and to offer that, and he said, "I have your rate sheets here and I will let you have those. but you would need a truck, really, to bring all the exhibits, but I

202 guess that is enough''—and I went ahead on that assumption to trial. If he is going to show this is incompetent—

Mr. Lannon: No, I do not say that.

Mr. Nolan: I have a right to offer as much of this as I want to.

The Court: He does not say it is incompetent, but he says, as I understand it, in order for the Court to pass upon the question the Court must have available, at
203 least presumably before the Court, all of the evidence that was before the Shipping Board.

Mr. Nolan: I disagree with him, sir, and I will tell you why—

The Court: I do not so assert it, but that is his contention.

Mr. Nolan: I disagree with Mr. Lannon, in this way: I come here under a pleading which raises this exact issue, though Mr. Lannon has not read it that way. I say neither the Shipping Board nor this Court
204 has jurisdiction.

Mr. Lannon: I have not raised that question.

Mr. Nolan: You said I had not raised this particular issue. I say in meeting that I can offer as much of the record before the Shipping Board as in my judgment shows that the Court did not have the jurisdiction, or that they did not make the finding, but that if Mr. Lannon wants to support his theory, which he did not support on his *prima facie* case, then it is

up to Mr. Lannon to produce the rest of the record. 205

(A discussion between Court and counsel ensued not reported.)

The Court: This will be received in evidence, marked as an exhibit, and any additional exhibits which were used before the Shipping Board which may not have been physically produced in court may be referred to by counsel on either side or actually physically produced, if that be possible. In other words, they are deemed to be in the presence of the Court. 206

Mr. Nolan: That is perfectly satisfactory, sir.

(Marked Exhibit C.)

(Mr. Nolan then read to the jury from Exhibit C.)

Mr. Nolan: I have but one witness, your Honor, to call. He is an expert as to the law of France. Then my case will be completed.

Mr. Lannon: I think under your Honor's ruling unless he testified before the Board you would not permit him to testify here. I do not see that his testimony would be competent here. 207

The Court: It is on the subject of jurisdiction, I suppose, which is always competent. I assume the contention is going to be that Congress has no extra-territorial jurisdiction.

Mr. Nolan: Yes, sir.

The Court: The question follows whether the contract is to be regulated by the law

of France; therefore whether that is competent to this issue. I think without ruling as to its binding force we better have the record complete. You may make the offer after the recess.

(Recess until 2:05 o'clock P. M.)

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AFTERNOON SESSION.

JEAN MANCINI, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination by Mr. Nolan:

Q. Mr. Mancini, where do you reside? A. I reside at 15 East 40th Street, New York.

Q. You are a member of a law firm? A. I am
210 a member of a law firm; yes, sir.

Q. What is the name of the firm? A. Mancini & Brault.

Q. You maintain an office in Paris for the practice of law? A. Yes, sir.

Q. Are you admitted to practice law in the courts of France? A. I have been, sir.

Q. Are you a member of the Court of Appeals in Paris? A. Yes, sir.

Q. You are familiar with the laws of France? A. I am.

Q. And have studied them? A. I have studied them.

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Q. And you are familiar with the laws of France relating to the execution and construction of bills of lading or contracts of affreightment? A. I am.

Q. Have you examined the bill of lading which is—

Mr. Lannon: May we get upon the record the length of service and the time that he has been at the Bar? You did not ask him that.

212

Mr. Nolan: Surely.

Q. When were you admitted to the Bar in France, Mr. Mancini? A. In February, 1918.

Q. And you practiced there for a while? A. I did, sir.

Q. And still practice over there? A. Still practice.

Q. You have just returned from France now, have you not? A. I did, sir.

Q. Have you examined the bill of lading, Defendant's Exhibit B in this case, which I hand you (handing witness)? A. Yes.

213

Q. What are the requirements under French law for the validity of a bill of lading?

Mr. Lannon: I will put my objection on the record at this point, if your Honor will permit me. I object on the ground it is incompetent, immaterial and irrelevant to any issue in this case; that if it is within any of the provisions of the law of this country the terms of a contract made in a foreign country, if they are at variance

with the law of this country, the contract is void under our law. Therefore, that it is immaterial what the law of France is so far as this particular controversy is concerned, the only point here being as to whether or not this contract comes within the decisions of our courts which hold that any common carrier, carrier by water, makes all its contracts subject to the provisions of the statute; so that if the statute prohibits discrimination between shippers to America, it makes no difference what conditions are included in those contracts, and if your Honor wishes the authorities on the subject—

215

The Court: No, I think as a proposition generally you are correct. Of course, it harks right back to the crux of the whole case, whether or not the Shipping Board Act applies to a case such as this, a foreign steamship company transporting merchandise between this port and France, and whether or not a contract made in France by persons competent to there make it, but in conflict with the Shipping Board Act, or presumably so, is invalid. That is the question.

216

(A discussion ensued between Court and counsel not reported.)

The Court: You desire to ask this witness now as an expert on French law what the law of France is applicable to this particular contract?

Mr. Nolan: Yes, sir, as to these 279 contracts.

The Court: Yes, which are all of a similar type. 217

Mr. Nolan: Yes. I intend to establish that under the law of France these particular contracts are valid.

The Court: Without at the present moment ruling that evidence of the law of France is relevant or will be decisive of this case, I will overrule the objection for the present. Later on I will endeavor to clarify the issues, as to whether or not I deem this relevant to the case as now presented. An exception will be noted. 218

Mr. Lannon: I take an exception. May I make a further objection to the question, that whatever the law of France may be, it is not binding on the plaintiff for the reason that the plaintiff is not a party to this contract.

The Court: That the plaintiff is not a party to this contract?

Mr. Lannon: Is not a party to that particular contract. These are bills of lading which were taken out in France at the time the goods were shipped. We never signed it; we were simply the consignee, and we were here in this country. We were no parties at all to these contracts. I understand the law to be that the consignor becomes a party to a bill of lading; it is an agreement between the shipper and the carrier. They have a lien on the goods for the freight, it is quite true, but it is not binding on us. We have a right to bring suit because we are the parties who 219

220 are injured; we pay the freight. We are not bound by this, because we did not enter into these contracts.

Mr. Nolan: May I ask Mr. Lannon if he will admit that his client used those bills of lading to enter the goods at the Custom House, and obtained the custody of the goods?

Mr. Lannon: We were the consignees. That is what the consignees do.

221 Mr. Nolan: If Mr. Lannon says here as a matter of record to this Court that his client is not a party to this bill of lading, then the Court has absolutely no right to give him a remedy.

The Court: Then the case is ended.

Mr. Nolan: Then the case is ended.

Mr. Lannon: We are consignees, and to that extent, yes.

Mr. Nolan: You can not take a part and not take the whole.

The Court: The objection is overruled
222 and exception will be noted on all of the grounds stated by counsel. The right is reserved to counsel, however, to move to strike from the record any evidence as to this contract which may be presented by the witness, and without prejudice to a renewal of his motion.

Q. Under what law is the validity of the bills of lading—under what section of the law of France is the validity of the bill of lading judged? A. It is judged under the article 281 of the Code of Commerce.

Q. And what are the requirements for the validity? A. The requirements that the bill of lading shall contain the name of the shipper, the name of the consignee, the name of the ship-master, the place of departure and the place of destination of the ship, and the mark and numbers of the goods to be carried, and the price of freight.

Q. In your opinion as a French lawyer, Mr. Mancini, is that bill of lading, Defendant's Exhibit B, and the other 278 similar bills of lading 224
valid under the law of France? A. It is.

Mr. Lannon: I suppose this is all being taken subject to my objection and exception.

The Court: Yes, and all subject to the right of counsel to move to strike out.

Q. And it does comply with the requirements of the French law? A. It does.

Q. Is it enforcible in France between any of the three parties named in it? A. Yes, sir; it is, 225
according to Article 283 of the Code of Commerce, which recites that the bill of lading, that in the form ruled by the law, is the evidence of the legal agreement between the parties.

Q. Under the law of France, Mr. Mancini, is there any provision of a time limit within which suit must be brought by any of the parties under such a bill of lading? A. Yes, there is a limit of one year.

Q. Is that provided for by some section of the code? A. It is provided by Article 433 of the Code of Commerce.

226 *Jean Mancini—For Defendant—Direct.*

Q. And what is the provision, what is the effect under the French law, of that provision of a time limit of one year? A. The effect is that the obligation is extinguished after a year.

Q. If suit is not brought within a year, you mean? A. Yes, sir.

Mr. Lannon: May I add at this point that I have a further objection, that that is a special defense of the statute of limitations which has not been pleaded.

227 The Court: Unless you pleaded the French law. That would include statutes of limitation under the French law.

Mr. Lannon: He did not plead it in that form, sir. There is nothing in the pleadings at all that raises any question of the statute of limitations.

The Court: Counsel is correct where the statute of limitations ordinarily is a special defense it must be pleaded. That has reference to the statutes of limitation

228 under American law, state or federal. Where the application of the French law is pleaded I think that goes to the very jurisdiction itself. Objection is overruled with exception.

Mr. Nolan: That is all.

The Court: Any cross examination?

Mr. Lannon: We have no cross examination.

Mr. Nolan: The defendant rests.

The Court: Does the plaintiff rest?

Mr. Lannon: Yes, sir.

The Court: Then both sides rest.

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Mr. Lannon: May it please the Court, I move to strike out the testimony of the previous witness upon the grounds urged.

Mr. Nolan: I think the testimony under the leading authorities, both in this Court and the Supreme Court of the United States, is competent.

(A discussion of Court and counsel ensued not reported.)

The Court: Gentlemen, I am ready to decide this case.

230

Mr. Nolan: I want to make a motion for the direction of a verdict, but in making the motion, sir, I reserve the right to withdraw and to go to the jury in case your Honor does not agree with my point—to go to the jury as to certain facts which I shall elucidate afterwards.

The Court: In other words, by both sides moving, as I assume you are, you do not want to take it from the jury, but ask for a direction.

Mr. Nolan: Yes, sir.

The Court: And failing in that you want to go to the jury.

231

Mr. Nolan: Yes, sir. I ask your Honor to decide in my favor and, if not, I want to go to the jury.

Mr. Lannon: I suppose I should get my motion for the direction of a verdict upon the record, on the grounds stated. I ask formally for the direction of a verdict in my favor.

The Court: And you for a verdict for the defendant?

Mr. Nolan: Yes, sir, but I want to state my grounds.

I move for the direction of a verdict upon the

232 *Case.*

ground that the cause of action is an attempt to enforce a statute of the United States extraterritorially—that is, in the Republic of France, which under the constitution the courts have no power to do; all of the contracts, 279 of them, were made in the Republic of France between French parties, over a period of two years, for a performance in France and upon French vessels, which under our law are French territory, and that the contracts are therefore subject to the
233 law of France and not capable of being attacked collaterally here either in this proceeding or any other collateral proceeding; upon the further ground that the intention of the parties as disclosed by the contract itself here and its wording was to make the contract subject to the law of France and that there is no evidence offered by the plaintiff that the intention of the parties was to subject the contract to any other law than that of France; upon the further ground that the contracts in the bills of lading provide in substance that the law of France shall govern this contract,
234 all the contracts, and that this Court therefore should apply the law of France in the construction and judgment of the contracts before the Court; on the further ground that the enforcement of the statute creating the Shipping Board, and the amendments of that statute, as interpreted and applied in this case, deprives the defendant of its property in violation of the Constitution of the United States and more specifically in violation of the Fifth Amendment to the Constitution; upon the further ground that the enforcement of these statutes against the defendant in this case deprives the defendant of the

freedom to contract in a foreign jurisdiction where such contracts under the laws of such jurisdiction are competent and legally made; upon the further ground that the contracts were fully executed by the parties to be bound thereby, and that the presumption of law is that the contracts were supported by a legal and valid consideration running from this plaintiff to this defendant or from the plaintiff's assignees, whichever attitude is taken toward this defendant; upon the further ground that the enforcement of the Shipping Board statutes and its amendments as interpreted here, deprives the defendant of the benefit to contract to collect rates which the shippers were obligated by their agreement in those contracts to pay to the defendant under the law of France, and deprives this defendant of its property without due process of law, in violation of the Constitution and the Fifth Amendment; upon the further ground that assuming but not conceding that the laws of the United States apply to the contracts, when properly construed, the facts and the evidence before this Court now show that there was no preference or discrimination in rates within the meaning of the Shipping Board statutes, but the difference in rates was based upon a fair and reasonable difference in services; on the further ground that the difference in rates shown in the evidence is based upon difference in services, and are reasonable differences; upon the further ground that the presumption of law is that the consignee is obligated to pay the freight unless a special clause is incorporated that the con-

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238 *Case.*

signee shall pay the same; and upon the further ground that assuming that the laws of the United States apply to this action, then the action cannot be maintained because it is an attempt to collect more than one penalty in the same action; and upon the ground that the action in itself is in the nature of an attempt to collect a penalty or penalties; upon the further ground that this Court has no jurisdiction of the subject matter; upon the further ground that the acts of Con-
239 gress, including this particular act creating the Shipping Board, and its amendments, have no extraterritorial force; upon the further ground that the delivery of the goods and the payment of freight in the United States do not control the question of the law of which country shall apply to the contract, and upon the further ground that the plaintiff has failed to make out any case whatsoever against this defendant.

Mr. Lannon: I will make my motion now for the direction of a verdict and will state the grounds.

240 The Court: Yes.

Mr. Lannon: First on the ground that the defendant has failed to overcome the *prima facie* case made out by the plaintiff on the supplemental report, findings and orders of the Shipping Board; the second ground, that there has been no evidence submitted whatsoever to overcome any of the evidence that was before the Shipping Board. On the further ground that the French ships which carry these goods are not French territory when they come within our harbor, that they simply have a personal privilege; that the French Line has obtained authority to do

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business in the State of New York and has subjected itself not only by the fact that the commerce clauses of the Constitution give the Congress power to make laws affecting the foreign commerce of the United States, but on the additional ground that they have come here and have asked our State to permit them to do business here, and by so doing they have obligated themselves to follow the law of our country, irrespective entirely of what rights we may have under the Act of Congress; and on the further ground that in the contracts that are made by the French Line they are made subject to the laws of the United States which might be applicable thereto when they undertake to transport goods to this country and use our ports.

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Mr. Nolan: I might say to your Honor in answer to those grounds and in support of my own, that you will bear in mind there is nothing in the Shipping Board Act which says that no foreign ship shall do business in or come within the harbor of the United States unless so and so. Nor is there any provision that says a ship which will not conform to this regulation shall be driven from the United States. There is no such tag put on my client to do business in the State of New York.

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The Court: In order that your rights may be preserved, I will first deny the motion on the part of the defendant. I will say that at this juncture, because you say you want to move to go to the jury on some question of fact.

Mr. Nolan: Yes, sir; I do.

The Court: Otherwise you might be deemed to waive it.

Mr. Nolan: I request that I go to the jury on certain facts I will mention to the Court. May I take an exception to the ruling of the Court?

The Court: Yes. You may reserve the right to move to go to the jury on certain questions of fact.

Mr. Nolan: Yes, sir.

The Court: Do you want to make that motion now or at the conclusion of these matters?

Mr. Nolan: I think I might make it now and
245 your Honor can dispose of it one way or the other.

The Court: I will pass upon the motion of the plaintiff for the direction of a verdict and I will hear you on the motion to be allowed to go to the jury on certain questions of fact.

Mr. Nolan: Do you want me to make those motions now?

The Court: Unless you prefer to do it at the conclusion of the case. Perhaps it would be better. I think after I rule you will have some indication of what is in my mind.

246 Mr. Nolan: All right, sir.

The Court: You will be deemed not to have waived your right to move to go to the jury on the certain questions of fact that you had in your mind.

Mr. Nolan: Yes, sir.

The Court: Addressing myself to the motion of the plaintiff for the direction of a verdict, in the first place I think the statute is applicable to domestic and foreign vessels using our ports and availing themselves of the privilege of entering our ports. For the Court at this juncture to deny the jurisdiction of the Shipping Board

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would be to hold that the statute which is the subject matter under discussion does not apply to foreign vessels entering our ports, and in effect would render inoperative and of no effect the conclusion of the Shipping Board in the case which was the subject of their inquiry and which is now the subject matter of this suit.

The Supreme Court has passed upon the so-called Seamen's Acts, holding that Congress had power to legislate concerning contractual relations and compensation of seamen employed in

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foreign countries for work on vessels that avail themselves of the privilege of entering our ports. By analogy I feel bound to hold that Congress had the power in the present instance to legislate concerning discrimination in rates, and inasmuch as the statute makes the proceedings before the Shipping Board a *prima facie* case, the only other preliminary inquiry for us is whether the statute be applicable and not in violation of the provisions of the Constitution.

The further inquiry remaining is whether there is evidence to sustain the findings of the

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Shipping Board—not whether the evidence, if presented to this Court in the first instance, might persuade the Court to come to a different conclusion, but whether the Shipping Board, vested with its power, had before it evidence of a substantial nature to support their findings.

In the absence of any proof to the contrary I must assume that they had such evidence before them. Therefore, without regard to the view of this Court if the case were tried in the first instance here, it becomes my duty, following particularly the case in the Supreme Court referred

250 to by counsel, the citation of which I have not at the present moment before me, to direct a verdict in favor of the plaintiff for the sum of $78,230.09, that being the amount of principal indicated by the Shipping Board as excess freight charges and the interest thereon to date, as computed by the witness.

I am not unmindful of the provisions of the statute which vest the Court with power to add a counsel fee. Inasmuch as this is the first time
251 this question has been raised under the statute, and the penalty is somewhat heavy, in any event, I do not think it a proper exercise of discretion to add counsel fee to the direction of the verdict, and therefore the mind of the Court is that none will be added.

Mr. Nolan: If your Honor please, on behalf of the defendant I ask to go to the jury upon the question whether the intention of the parties in the contracts herein was to subject the contracts themselves to the laws of France or to the laws of the United States; second, whether the
252 differences in rates complained of were reasonable in view of the circumstances and the difference in service. I ask your Honor to charge as matter of law that the intention of the parties must be governed by the law of France and that the difference in rates was reasonable under the statute.

The Court: Those are all?

Mr. Nolan: Those are all, sir.

The Court: Those requests are severally denied, and exception will be noted in each instance. The motion to go to the jury will be deemed to have been seasonably made, and without pre-

judice to the motion made a short time ago by counsel for the defendant for the direction of a verdict in his favor, which was denied. 253

Mr. Nolan: And I also ask for an exception to your Honor's direction of the verdict in favor of the plaintiff.

The Court: I think the questions which are involved in the requests to go to the jury have been covered by my oral decision on the main issue.

Mr. Nolan: Except as to whether we are actually entitled to it. 254

The Court: Yes, and I think your rights are fully protected by the exceptions noted, and the jury is now directed to return a verdict as stated.

(Pursuant to the direction of the Court, the jury finds a verdict in favor of the plaintiff in the sum of $78,230.09.)

Mr. Nolan: If your Honor please, I move to set aside the verdict of the jury as against the law and the evidence and the weight of the evidence and the minutes before your Honor.

The Court: That will be denied with exception. 255

Mr. Nolan: May I ask for thirty days stay of execution and sixty days to make a case, and I ask your Honor to extend the term until the stenographer's minutes are written out.

The Court: Yes, the rules give you time to make a case. If at any time you find it necessary to extend the term I will sign an order specifically extending the term so you will be fully protected.

Mr. Nolan: And then your Honor will grant me a writ of error?

The Court: Yes.

256 **Plaintiff's Exhibit No. 1.**

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 27th day of July, 1926.

Formal Complaint Docket No. 13

American Tobacco Company

v.

Compagnie Generale Transatlantique
257 (French Line)

WHEREAS, on December 29, 1925, the Board entered its report and order in the above-styled proceeding, awarding reparation to said complainant in the sum of $47,856.98 and interest thereon; and

WHEREAS, After correcting clerical errors of complainant duly shown, the sum to which complainant is entitled as an award of reparation is $54,030.82 and interest thereon; now, therefore,

258 IT IS ORDERED, That said report and order of the Board of December 29, 1925, is modified to award as reparation on account of unlawful transportation charges exacted the sum of $54,-030.82, with interest thereon at the rate of six per cent per annum computed from the respective dates of payment by complainant of said charges as specified in column numbered 24 of amended Exhibit A of record.

By the Board:

(Signed) SAMUEL GOODACRE,
(Seal) Secretary.

Plaintiff's Exhibit No. 1. 259

UNITED STATES SHIPPING BOARD.

DOCKET No. 13.

AMERICAN TOBACCO COMPANY,

v.

COMPAGNIE GENERALE TRANSATLANTIQUE 260

(FRENCH LINE)

DOCKET No. 13.

AMERICAN TOBACCO COMPANY,

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE). 261

Submitted September 30, 1925. Decided December 29, 1925.

Upon further hearing reparation awarded on shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York on account of injury due to unjustly discriminatory charges. Original report, 1 U. S. S. B. 53.

262 *Plaintiff's Exhibit No. 1.*

JUNIUS PARKER, CLINTON ROBB, and JNO. H. HOLMES for complainant.

JOS. P. NOLAN for respondent.

SUPPLEMENTAL REPORT OF THE BOARD.

Exceptions filed by the parties to the proposed report in this case have been carefully considered.

263 This proceeding involves collect shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York, moved during the period April 7, 1919, to January 3, 1921, and consigned to the complainant American Tobacco Company. In connection with these shipments the respondent French Line exacted charges for loading and carriage calculated upon a fixed basis of 5 francs to $1, while in regard to prepaid shipments of identical commodities carried for other of its patrons from Havre and Bordeaux to New York during the
264 same period and in many instances upon the same vessel, the respondent accepted payment of such transportation charges in francs at the current rates of exchange ranging from 5.88 to 17.07½ francs to $1.

Under authority of section 22 of the shipping act, sworn complaint alleging violations of that statute by the carrier in connection with the higher charges thus exacted was filed by the American Tobacco Company, and hearing was duly conducted by the board in accordance with its rules of practice. In its report in this case,

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rendered on July 17, 1923 (1 U. S. S. B. 53), the board decided from the evidence submitted by the parties at such hearing that the charges complained of were unduly prejudicial, unduly preferential, and unjustly discriminatory, in violation of sections 16 and 17 of the shipping act, to the extent which they exceeded prepaid charges on like shipments from and to the same ports and additional incidental costs, if any, which the carrier was compelled to absorb by reason of transporting collect. In regard to reparation con-

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tended for, however, it was decided that the record did not afford a basis for determining the extent, if any, to which the complainant had been injured, and the case was assigned for further hearing in respect to any such injury sustained and the amount of reparation to which the complainant might be entitled by reason thereof. Following extensions of time granted at the request of the parties, supplemental hearing was accordingly conducted on May 12, 1925, and the present report and decision are confined to a consideration of the issues whether in fact

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the complainant was injured within the meaning of section 22 of the shipping act by the payment of the charges found to have been unlawful, and, if injured, the pecuniary amount to which it is entitled as an award of reparation.

Much of the testimony of the complainant's witnesses examined at the supplemental hearing was addressed in detail to the several kinds of cigarette papers in books purchased and sold during 1919, 1920, and 1921 by the complainant and other tobacco companies with which it competed, and to the various brands of cigarettes in

268 *Plaintiff's Exhibit No. 1.*

the manufacture of which the cigarette paper in bobbins was used. The facts of record as provided by the evidence of these witnesses are that during this period all of such cigarette papers in books were imported from France, and, with the exception of some Italian and Japanese paper imported by one of the companies, all paper in bobbins used in the manufacture of cigarettes by both the complainant and such other tobacco companies likewise came from France
269 and was purchased direct or through New York representatives of French manufacturers. Each of the companies (American Tobacco Company, Liggett & Myers Tobacco Company, R. J. Reynolds Tobacco Company, Pierre Lorillard Company, Surbrug Company, and others) had upon the same market its particular cigarette papers or cigarettes which corresponded in general character and quality to respective papers and cigarettes of the other companies. While for short intervals the price of one brand or another was higher or lower than a corresponding brand or
270 another company, it is shown that throughout 1919, 1920, and 1921 the prices obtained by the several companies for their respective products here involved were practically the same. Considerable evidence is of record evincing that at no time was the complainant able to recoup any part of the greater charges paid by it by increasing the prices of its papers or cigarettes.

Testimony was also presented on behalf of the complainant regarding cost of production, method of computing cost items, and other matters having bearing or conceived to have pertinence in a decision of the issues involved.

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Although the respondent was represented at the supplemental hearing by counsel, who cross examined the complainant's witnesses at length, no witnesses were presented or testimony offered on its behalf, and nothing was advanced by it tending to show the fact or amount of any additional cost incident to the carriage of the complainant's shipments collect rather than prepaid.

Upon all the facts in this case it is undeniable that the complainant suffered injury within the meaning of section 22 of the statute by reason of the unlawful charges paid. As upon the record the injury thus sustained is fairly comparable to the difference between the transportation charges exacted of the complainant and what they would have been had its shipments been accorded charges based on the current rates of exchange similarly as were those of its competitors, together with interest, that difference and interest constitute the sum to which the complainant is entitled as an award of reparation. The principal of this sum is properly to be calculated upon the basis of the rate of exchange on the dates of the complainant's bills of lading, rather than, as contended by the complainant throughout the proceeding, upon the dates on which the charges were approved by it for payment. As in connection with each of the complainant's shipments the interim between the bill of lading date and the date payment of the charges was approved was one of decrease in the rate of exchange, the principal amount of reparation to which the complainant is entitled is less than the $53,840 prayed for.

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274 *Plaintiff's Exhibit No. 1.*

From a consideration of all the facts, circumstances, and conditions of record the board finds that during the period April 7, 1919, to January 3, 1921, the complainant American Tobacco Company made 279 shipments of cigarette papers in books and cigarette paper in bobbins, as set forth and described in exhibits of record in this proceeding, on which it paid and bore transportation charges in the sum of $99,755.47; that said charges on said shipments were unduly prejudi-
275 cial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the shipping act, as decided by the original report of the board herein, to the extent which they exceeded $51,898.49; that said complainant has been injured by the respondent Compagnie Generale Transatlantique within the meaning of section 22 of that statute in the sum of $47,856.98 and interest thereon at the rate of 6 per cent. per annum from the respective dates of payment of the transportation charges involved as specified
276 in column 24 of complainant's amended Exhibit A, and that the complainant American Tobacco Company is entitled to an award of reparation in the amount of said sum and interest.

An order will be entered accordingly.

Plaintiff's Exhibit No. 1. 277

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 29th day of December, 1925.

Formal Complaint Docket No. 13

American Tobacco Company *v.* Compagnie Generale Transatlantique (French Line)

Whereas on July 17, 1923, the board entered its report in the above-styled proceeding, among other things assigning for further hearing the 278
issues as to the fact of injury sustained by complainant and the amount of reparation, if any, to which complainant might be entitled by reason of any such injury; and

It appearing that such further hearing and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed its report thereon containing its conclusions, decision, and findings of fact, which said report is hereby referred to and made a part hereof;

IT IS ORDERED, That the respondent Compagnie 279
Generale Transatlantique pay unto the complainant American Tobacco Company on or before ninety days from date hereof, as reparation on account of unlawful transportation charges exacted, the sum of $47,856.98 with interest thereon at the rate of six per cent. per annum computed from the respective dates of payment by complainant of said charges as specified in column numbered 24 of amended Exhibit A of record herein.

By the board.

(Sgd.) ROY H. MORRILL,
Secretary.

[SEAL]

280 *Plaintiff's Exhibit No. 1.*

UNITED STATES SHIPPING BOARD.

DOCKET NO. 13.

AMERICAN TOBACCO COMPANY,

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE).

Submitted May 24, 1923. Decided July 17, 1923.

281 Charges exacted for transportation of collect shipments unduly prejudicial to complainant, unduly preferential of its competitors, and unjustly discriminatory, in violation of sections 16 and 17 of shipping act, to extent they exceeded prepaid charges on like shipments from and to the same ports, plus such additional costs as carrier was compelled to absorb over and above those accruing in connection with prepaid shipments.

282 Extent of injury, if any, to which complainant subjected not afforded by this record, and case assigned for further hearing in respect to any such injury and the amount of reparation to which complainant may be entitled.

JONATHAN HOLMES for the complainant.

JOSEPH P. NOLAN for the respondent.

REPORT OF THE BOARD.

Proposed report in this proceeding was served upon the parties, and exceptions thereto filed on behalf of the respondent carrier have been given careful consideration.

The complainant in this case is a New Jersey corporation engaged in the manufacture and dis-

tribution of tobacco products and cigarette papers, with principal offices in New York, N. Y. The respondent is a corporation organized and existing under the laws of the Republic of France, having an office in New York, N. Y., and is engaged as a common carrier in the transportation of property between ports in the United States and France, in which common-carrier capacity it is subject to the applicable provisions of the Federal shipping act of 1916.

By complaint filed under authority of section 284
22 of the shipping act the American Tobacco Company alleges that in respect to certain shipments transported by the respondent steamship company it was subjected to undue and unreasonable prejudice and disadvantage and to the payment of unjustly discriminatory rates, in violation of sections 16 and 17 of that statute. Inasmuch as it was shown at the hearing that the alleged unlawful charges of the carrier are no longer exacted, that part of the complaint requesting the board to order the discontinuance thereof may be disregarded. Consideration of 285
the case in this report, therefore, will be confined to a determination of the issue of unjust discrimination as relates to the charges of the carrier in the past. It should also be noted at this point that if unjust discrimination is found to have existed, the question whether the complainant is entitled to reparation will be determined from evidence to be submitted at a supplemental hearing.

According to the record, it appears that during the period April 7, 1919, to January 3, 1921, there

286 *Plaintiff's Exhibit No. 1.*

were carried for the account of the complainant by the French Line from Bordeaux and Havre to New York 279 shipments of cigarette papers in books and cigarette paper in bobbins, for which service freight charges in the total sum of $99,755.47 were collected upon delivery at destination. It is shown by the evidence that these charges were calculated upon a fixed basis of 5 francs to the dollar in New York, and that on prepaid shipments of identical commodities car-
287 ried for other of its patrons from Bordeaux and Havre to New York during the same period, and in many instances upon the same vessel, the respondent accepted payment in France of freight charges in francs at the current rate of exchange. The result was that the complainant paid more than its competitors for transportation of the same character of commodity from and to the same ports. Thus, for illustration, the freight on cigarette papers on December 19, 1919, was 60 francs per cubic meter. With respect to a shipment of 12,890 cubic meters of this commod-
288 ity covered by bill of lading issued on that date the complainant paid as freight upon arrival at New York on January 5, 1920, the sum of $154.68, or at the rate of $12 per cubic meter. At the current rate of exchange of 11.18 francs per $1, as shown in the table following, it is seen that the charge to complainant's competitors in connection with shipments carried on the same vessel was but $5.36 per cubic meter, or $6.64 per cubic meter less than the amount paid by complainant. The difference between the charges on all shipments carried for the complainant on the basis of

Plaintiff's Exhibit No. 1.

5 francs to one dollar and what those charges would have been on the basis of the actual rate of exchange in effect on the dates such shipments were made is alleged to be $53,840, which amount is claimed as reparation.

Rate of exchange at port of origin on date of bill of lading.

Date.	Francs per dollar.	Dollar per franc.	Date.	Francs per dollar.	Dollar per franc.	Date	Francs per dollar.	Dollar per franc.
1919.			1919.			1920.		
Apr. 7.....	5.88	0.1701	Dec. 27.....	10.54½	0.0948	July 23.....	13.14	0.0761
Apr. 22.....	6.02	.1661	Dec. 30.....	10.74½	.0931	July 30.....	13.07½	.0765
Apr. 25.....	6.11	.1637				July 31.....	13.10½	.0763
Apr. 26.....	6.08	.1645	1920.			Aug. 4.....	14.04	.0712
May 17.....	6.45	.1550	Jan. 5.....	10.75½	.0930	Aug. 7.....	13.93	.0718
May 21.....	6.64½	.1505	Jan. 6.....	10.75	.0930	Aug. 14.....	13.82	.0723
May 22.....	6.63	.1508	Jan. 10.....	11.14	.0898	Aug. 20.....	14.12	.0708
July 9.....	6.84	.1461	Jan. 17.....	11.57	.0864	Aug. 21.....	14.12	.0708
July 10.....	6.87	.1455	Jan. 31.....	13.22	.0756	Aug. 26.....	14.19	.0705
July 19.....	7.07½	.1413	Feb. 13.....	14.33½	.0698	Sept. 8.....	14.82½	.0675
July 30.....	7.26	.1377	Feb. 15.....	14.11	.0709	Sept. 10.....	14.85½	.0673
Aug. 2.....	7.28	.1374	Feb. 24.....	14.24½	.0702	Sept. 24.....	14.84	.0674
Aug. 7.....	7.74	.1292	Feb. 29.....	14.29½	.0700	Sept. 25.....	14.84	.0674
Aug. 15.....	7.79½	.1283	Mar. 10.....	13.44	.0744	Sept. 27.....	15.01	.0666
Aug. 20.....	8.17½	.1223	Mar. 13.....	13.41½	.0745	Sept. 29.....	14.91½	.0670
Aug. 23.....	8.17	.1224	Mar. 23.....	14.93½	.0669	Oct. 2.....	14.84½	.0674
Sept. 11.....	8.40½	.1190	Mar. 26.....	14.40	.0694	Oct. 12.....	15.30	.0654
Sept. 18.....	8.74	.1144	Mar. 27.....	14.40	.0694	Oct. 16.....	15.40	.0649
Oct. 3.....	8.44½	.1183	Mar. 30.....	14.90½	.0671	Oct. 18.....	15.45	.0647
Oct. 4.....	8.41½	.1188	Mar. 31.....	14.97	.0668	Oct. 25.....	15.49½	.0645
Oct. 10.....	8.49½	.1177	Apr. 7.....	15.34	.0652	Oct. 30.....	15.65½	.0639
Oct. 18.....	8.62½	.1159	Apr. 8.....	15.26	.0655	Nov. 9.....	17.29	.0578
Oct. 25.....	8.66	.1154	Apr. 10.....	15.81	.0633	Nov. 24.....	16.40	.0610
Oct. 27.....	8.61½	.1161	Apr. 17.....	16.22	.0617	Nov. 25.....	16.71½	.0598
Oct. 28.....	8.67½	.1153	Apr. 24.....	16.63½	.0601	Dec. 2.....	16.45	.0608
Nov. 8.....	9.01½	.1109	Apr. 30.....	16.66½	.0600	Dec. 6.....	16.79½	.0595
Nov. 12.....	9.54	.1048	May 22.....	13.90	.0719	Dec. 18.....	16.73½	.0598
Nov. 13.....	9.34	.1071	May 29.....	13.75	.0727	Dec. 23.....	16.83½	.0594
Nov. 18.....	9.61	.1041	June 7.....	12.98	.0770	Dec. 25.....	16.83½	.0594
Nov. 22.....	9.61½	.1040	June 8.....	12.99½	.0769			
Nov. 24.....	9.60	.1042	June 14.....	13.22½	.0756	1921.		
Nov. 29.....	9.75½	.1025	June 19.....	12.50½	.0800	Jan. 3.....	17.07½	.0586
Nov. 30.....	9.75½	.1025	June 26.....	12.03	.0831			
Dec. 6.....	10.78	.0927	June 30.....	12.15	.0823			
Dec. 19.....	11.18	.0894	July 20.....	12.23½	.0817			

292 *Plaintiff's Exhibit No. 1.*

Included in the record are copies of printed tariffs from which the charges for the transportation of the shipments involved in this proceeding were determined. Appearing upon each is the notation:

Important notice.—For shipments accepted with freight payable at destination, the rates of this tariff shall be converted into dollars on the fixed basis of five francs per dollar.

293 Evidence is presented on behalf of the French Line to the effect that, owing to the stringent financial situation prevailing in France during the period covered by the complaint, the carrier found it desirable to obtain possession of freight money in France at the earliest possible date, and in order to induce prepayment of charges it was found expedient to adopt the method of conversion of rates indicated in the above-quoted tariff provision. In this connection no evidence is of record tending to show why the respondent did not resort to the fundamental right inherent
294 in it as a common carrier to demand and receive payment of freight charges as a condition precedent to transportation.

Stress is laid by the carrier upon the contention that the complainant had equal opportunity with other shippers of cigarette papers to avail itself of the lower charges accorded prepaid shipments, and that as it elected to pay for the service rendered, upon delivery at destination it is precluded from alleging unjust discrimination under the statute. Knowledge of the lower charges to be had by prepayment is denied on

behalf of the complainant, and the evidence as a whole on this point is conflicting. 295

Section 16 of the Federal shipping act declares it unlawful for any common carrier within the purview thereof, directly or indirectly, "to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." By section 17 of that act it is provided "That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers." The manifest purpose of these provisions is to require common carriers subject to the statute to accord like treatment to all shippers who apply for and receive the same service; in view of which purpose if the tariff condition subjected the complainant to undue discrimination, his knowledge or lack of knowledge of such condition is plainly immaterial. In order to determine whether the complainant in the instant case was in fact subjected to undue and unreasonable prejudice and disadvantage and paid unjustly discriminatory charges for transportation, as alleged, it is pertinent, therefore, under the provisions of the statute above quoted, to consider whether the service furnished the complainant differed from that furnished shippers of cigarette paper who prepaid their freight and who were accorded lower charges. 296 297

298 *Plaintiff's Exhibit No. 1.*

The evidence of record indicates that, from a transportation standpoint, the shipments of the complainant were similar in every respect to those of shippers of cigarette paper who prepaid their freight. In so far as their actual physical handling and transportation were concerned, the record is conclusive that the service rendered by the respondent in connection with the consignments of each class of shippers was in every particular identical. It follows that unless conditions incident to the handling and transportation
299 of the complainant's collect shipments existed which warranted the higher charges exacted, discrimination within the contemplation of the statute is established. Conversely, such conditions, to justify the higher charges, must have resulted in some detriment to the carrier comparable in degree to the amount of such higher charges.

In this relation contention is made on behalf of the French Line that the higher charges paid by the complainant were justified because the
300 service rendered in connection with its collect shipments was of a more expensive character than that rendered shippers of cigarette paper who prepaid their freight. In support thereof it is shown that it was necessary for the respondent to insure the freight on collect shipments or to assume the risk of loss in the event of disaster at sea, as well as to absorb the cost of cabling the freight money collected at destination to France. On the other hand, it is shown by the complainant that the marine insurance rate was but 25 cents per $100 on paper in bulk and 75 cents per $100 on paper in books, and that war-

301

risk insurance averaged 7.2 cents per $100 during the period covered by the complaint. The exact cost of cabling does not appear of record. As a whole, the evidence clearly indicates that the difference in the charges exacted from the complainant and from shippers who prepaid their freight greatly and unduly exceeded the total amount of the carrier's additional expenditures resulting from its transportation of the complainant's shipments freight collect. As these incidents of the transportation service in connection with the complainant's collect shipments resulted in added expense to the carrier, however, the cost thereof might properly be reflected in a higher charge than for prepaid shipments.

302

From a consideration of all the facts and evidence of record, the board concludes and decides that, under the circumstances of this case, the charges collected from complainant were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the shipping act, to the extent that they exceeded the prepaid charges on like shipments from and to the same ports, plus such additional costs as the respondent was compelled to absorb over and above those accruing in connection with prepaid shipments. The record does not afford a basis for finding the extent, if any, to which the complainant has been injured, and the case will be assigned for further hearing in respect to any such injury and the amount of reparation to which the complainant may be entitled.

303

304 *Plaintiff's Exhibit No. 1.*

RESOLUTION

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 17th day of July, 1923.

Formal Complaint No. 13.

American Tobacco Company

v.

Compagnie Generale Transatlantique
305 (French Line)

WHEREAS, Pursuant to complaint seasonably filed with the Board under Section 22 of the Federal Shipping Act, by the American Tobacco Company against the Compagnie Generale Transatlantique, alleging unjust discrimination, in violation of Sections 16 and 17 of the Shipping Act, a hearing was duly had under Formal Complaint Docket No. 13; and

WHEREAS, The Division of Regulation of this Board, after analyzing the evidence submitted
306 at said hearing, has prepared a report in the premises; now, therefore, be it

RESOLVED, That the aforesaid report in Formal Complaint Docket No. 13 be and it is hereby approved, and that a copy of said report be forthwith served upon the aforesaid parties.

By the Board.

(Sgd.) CLIFFORD W. SMITH,
(Seal) Secretary.

Plaintiff's Exhibit No. 1. 307

I, SAMUEL GOODACRE, Secretary of the United States Shipping Board, do hereby state that as such Secretary I have lawful custody and control of the seal, the records, papers and documents of the United States Shipping Board, including all the records, papers and documents in Formal Complaint proceedings before the Board filed under Section 22 of the Shipping Act, and including all the records and documents in Formal Complaint Proceeding of American Tobacco Company vs. Compagnie Generale Transatlantique, Shipping Board Docket No. 13, and I hereby certify that the attachments are full, true and correct copies of the 308

Report decided and entered July 17, 1923.
Supplemental Report and Order decided and entered December 29, 1925.
Order entered July 27, 1926.

in said Docket No. 13, American Tobacco Company vs. Compagnie Generale Transatlantique, the originals of which are now on file and of record in the Office of the United States Shipping Board, Washington, District of Columbia, under my custody and control. 309

IN WITNESS WHEREOF, I have hereunto set my hand and have hereto affixed the seal of the said United States Shipping Board this Sixth day of October, 1927.

(Sgd.) SAMUEL GOODACRE,
Secretaryof the United
States Shipping Board.

(United States Shipping
Board Seal)

310

Plaintiff's Exhibit No. 2.

STATE OF NEW YORK,)
Office of the Secretary of State,) ss.:

IT IS HEREBY CERTIFIED, That the COMPAGNIE GENERALE TRANSATLANTIQUE filed a statement, under Section 16 of the General Corporation Law, including a designation of Augustin Forget, No. 3 Bowling Green, New York City, as a person in the State of New York upon whom process
311 may be served, accompanied with his consent, in the office of the Secretary of State on the 25th day of July, 1893, and that a certificate of authority under Section 15 of such Law was issued to such corporation on the same date.

WITNESS my hand and the seal of office of the Secretary of State, at the City of
(SEAL) Albany, this seventh day of October, one thousand nine hundred and twenty-six.

312 (Sgd) MARK STERN,
Deputy Secretary of State.

Defendant's Exhibit A—Bill of Lading in French. 313

(Not printed.)

Defendant's Exhibit "B"—Translation of Defendant's Exhibit A.

Compagnie Generale Transatlantique,

Bordeaux, January 31st, 1920.

Loaded by Mr. T. de Vial & Sons, 35/37 Avenue de Boutaut, on the SS. "Chicago", Captaine , at present at Bordeaux, or in any other in its place (or one of the following two), the goods declared by the shipper as is indicated in this bill of lading, all in apparently good condition, to be transported to New York, and there to be delivered to the American Tobacco Co., 111 Fifth Avenue or to order . 314

Shipment from Bordeaux to Havre per SS. of the (at the clauses and conditions of these owners).

Marks	*Numbers*	*Number of Pieces*	*Nature of Goods*	*Weight*	*Size*
A. T. C.	11275-11374	100	Cases of Cigarette papers	8100 ks	20m800

315

See reverse side for brought forward.

This shipment is made at the following conditions of which the shipper is aware and which he declares to accept:

General Conditions.

Rule 1. Except for the exceptions hereinafter provided the shipowner is liable as follows:

(1) He is responsible for the vessel being at the time of departure, properly manned and

316 *Defendant's Exhibit "B"—Translation of Defendant's Exhibit A.*

equipped, provisioned and in good navigable condition, capable to accomplish the proposed voyage, exception being made for hidden faults;

(2) The owner is liable for mistakes made by his deputies in the proper stowing, conservation, maintenance and delivery of the cargo.

Rule 2. The shipowner is not liable for loss and damage caused:

317

(1) By *viz major* perils of the sea, fire, explosion, boarding, stranding and other accidents of navigation.

(2) By war perils, barratry, pillage, theft, (unless theft or pillage be committed by the crew of the ship), arrests, or capture, by fumigating, disinfecting, or other sanitary measures ordered by authorities; by mutinies, riot, boycott, strike or lockout.

318 (3) By breaking or explosions of boilers or piping; breaking of beams or loading or unload ing apparatus, by any vice of the vessel of any kind, her rigging, machines, boilers, and accessories (except where the vice was apparent);

(4) By vermin, rats, worms, rust, decomposition, daily shrinkage due to the nature of the merchandise, breakage, heat, rain, hermatic influences, oxidation, or any effects resulting from these causes; costs of unloading or damage due to inherent character of the goods shipped; to insufficient packing be it too weak or contrary to

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rules to absence or insufficiency of address and marks or place of destination, effacing or disappearance of marks, numbers, addresses or destination of the goods shipped; neither for illegal acts, negligence, errors or mistakes of the pilot, Captain, or crew, or any persons employed in his service which might have added or contributed to damages, accidents or losses above mentioned. The shipowner has a right to demand, even in these cases, contribution to general average from the interested parties.

320

Rule 3. The shipowner is not liable for loss, damage or average due to deterioration, decay, deforming, leakage or its consequence; contact with or evaporation from other merchandise, except where such is the fault of his employes under the terms of Rule 1, paragraph 2.

Rule 4. The ship has the right to navigate without pilot, to load goods of all kinds, to tow other ships or render assistance, and to deviate from her route to save human lives or goods.

321

Furthermore, the ship has the right to delay in ports even though they be outside its regular course, or announced itinerary, in whatever order and for whatever purpose to tranship goods, to forward them by any ship or ships, to their destination, to enter into dry dock with cargo on board, to place goods in storage, to transport, them in lighters (floats or barges) for loading and unloading. In these and all other cases insurance of the goods is not incumbent on the shipowner.

322 *Defendant's Exhibit "B"—Translation of Defendant's Exhibit A.*

Rule 5. The ship is not liable for gold, silver, precious metals, money, titles, jewelry, works of art and analogous values, unless a regular bill of lading with express valuation of such goods has been signed.

In case of shipping of goods which have been with the consent of the shipper placed on deck, also in case of accepting loading and unloading of live stock, the shipper bears all the risk, un-
323 less damage due to faulty stowage, or insufficient sheltering.

In coastwise shipping, all goods loaded on deck are always considered to have thus been loaded with the consent of the shipper.

Rule 6. The shippers and consignees are liable for all loss and damage to the ship, equipment or cargo or to persons, by acids, inflammable or explosive merchandise, or which let off a strong odor, or are dangerous in some respects, where such merchandise has been shipped without spe-
324 cial agreement and without specially showing their nature in a precise manner, whether or not the shipper had knowledge of this dangerous character of the goods, and whether or not the goods have been shipped in his name or that of another party.

The captain may at any time when he becomes aware of the damage of such merchandise throw it overboard without being held in any manner liable, or may destroy them.

Rule 7. The shippers and consignees are liable for any damage which may result to the ship, the

owner of the cargo, from contravention or non-observance of Customs rules or through the importing of prohibited merchandise, or which are due to the fact that goods or their weight, value or contents of packages carried by him on the bill of lading are considered inexact or insufficient by the Customs authorities.

The shipowner has the right, in case the contents of the packages or their weight or value have been given inexactly, to ask twice the amount of freight which would have been due if these informations had been given correctly, and may for the purpose of determining contents, weight or value of the goods, require up to the end following their delivery from the shipper or consignee, producing of the original invoices.

RULE 8. Where the ship has given a receipt for goods which are still on the quay or in lighters, he shall not be liable except as he would be if such merchandise would still be on board, and if the employes of the intermediary were the employes of the shipowner. This liability cannot go beyond the limit in which such intermediary is liable to the shipowner.

RULE 9. The time for the ending of the liability of the shipowner for goods shipped on board according to the bill of lading, and the manner in which damages must be filed with the owner, are set forth in the Special Conditions of the bill of lading.

RULE 10. Where on account of quarantine, or the threatening of quarantine, ice, blockage, war,

328 *Defendant's Exhibit "B"—Translation of Defendant's Exhibit A.*

arrest, constraint of monarchs, people or Governments, troubles, strike, or lockout, boycott and other similar reasons, the Captain must ask himself whether he can securely reach the port of destination and discharge the merchandise in the usual manner, or continue the voyage without trouble, he shall have the right to discharge the goods at any other port which may seem to him convenient, and he will thereby fulfill his obligations. The consignee or shipper are in such case
329 liable for all costs and risks incurred to the merchandise on account of this procedure and they must be in the best manner possible advised of the steps taken.

If for any reason the goods cannot be brought to and discharged at the port of destination, the ship shall be free to discharge them on its return voyage, or to ship them to the port of their destination by other means, for the account, but not at the risk of the ship.

For the goods in transit from or to other ports,
330 the liability of the shipowner is limited to his regular lines of navigation.

Rule 11. The full freight is due for a damaged or leaking cargo. No additional freight is due for increasing weight due to water damage.

Rule 12. The captain has a mortgage right on all merchandise for payment of freight (normal or supplementary), all freight or difference in freight, and for the payment of the expenses incurred before or after discharge, including demurrages, eventual repair cost, cost to the Port

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of transshipment, cost of reshipment, fines, damages, and costs mentioned in these rules and the sums due under general averages.

Furthermore, the ship has a right of recourse against the shipper for the difference between the total of the amounts due to it and the result of the sale of the goods. (Proceeds of sale).

Rule 13. Aside from adjustment of claim for loss, incomplete delivery or damage, the value of the goods shall be prime costs price plus freight paid in advance and expenses incurred, but without duty and interest.

332

The shipowner is only liable for each parcel, measure unit or weight, in pounds for the amount as determined in the Special Conditions of this B/L.

In case of loss due to tardy delivery or delivery which is made in an irregular manner by the ship he shall be liable only for the amount given in the B/L and (only) in case such delivery in the port of destination is not made within three months after arrival of the ship in that port.

333

Rule 14. The weight, measurements, marks, numbers, quality, contents and values, although mentioned in the B/L are considered as unknown to the captain, unless the contrary has been expressly stipulated and agreed upon. Signing of the B/L does not imply such agreement.

Rule 15. General average is handled according to French Law (1) or on basis of York/Antwerp rules, (2) or if the shipowner may elect,

334 *Defendant's Exhibit "B"—Translation of Defendant's Exhibit A.*

classification will be made according to the conditions set forth in the Special Conditions of this B/L. The captain has a mortgage right on the goods for average contribution. The consignees must give the value of the merchandises for the determination of the general average, contribution, and as the captain may choose either sign a bond or give sufficient guarantee to pay in cash.

335 Rule 16. When the freight is payable at the place of destination, it must be paid, in together with other amounts due under Rule II, against delivery of the merchandise without deduction, in money, in the currency stipulated in the B/L or, upon request of the consignee, in the money of the country, at the rate of exchange which was the highest bank rate for sight drafts on the day of the arrival of the ship, and the customs has been declared.

The freight, whether paid in advance, or payable at destination, is always due, whether the
336 ship arrives in good condition or is lost on the voyage, also in case the voyage is forcibly interrupted. For determination of general average contributions, the ship is added to the value of the goods.

Rule 17. All clauses contrary to the above are void unless there is a special understanding in the special conditions.

Rule 18. In case of differences in the interpretation of the foregoing the French text is the only one that applies.

Defendant's Exhibit "B"—Translation of Defendant's Exhibit A. 337

All litigations arising out of interpretation or execution of this contract or bill of lading shall be judged according to French law at the Tribunal of the place indicated in the bill of lading, and the owners of the ship and claimants declare formally to accept its competency.

In case of appeal or of several of the defendants, articles 59 and 181 of the Code of Civil Procedure are set aside and all litigation is brought before the same court. 338

Special Conditions.

Article 1. All pieces must be marked clearly and further be numbered and given port of destination.

The Captain and the Company accept no liability whatever for the things mentioned under Rule 5, nor for merchandise the value of which exceeds francs 5,000, per freight ton, unless the value of the articles forming the total or partial contents of a parcel is expressly declared and 339 a special rate has been paid. The Captain and the Company reserve themselves the right to verify weight, measurements, contents or value of any parcel forming part of the cargo, if they deem it advisable.

Article 2. Loading and unloading shall always be handled by the Captain or the Company, or a man of their choice, at the expense and risk of the merchandise. In all cases, and usage of port to the contrary notwithstanding, the Cap-

340 *Defendant's Exhibit "B"—Translation of Defendant's Exhibit A.*

tain and the Company have the right, even before the vessel has entered and without any formality, to transship or have transshipped the goods to lighters; to deposit them or have them deposited on quays or into custom warehouses or those of the Company, if there is one, or any other place, warehouse, dock, etc., in case of quarantine into the place set aside for quarantine, if such place be sufficient; all at the option
341 of the Captain, but at the cost and risk of the owners of the merchandise who shall have no recourse against the Company or the Captain and who shall, moreover, reimburse the expense inclusive of shifting of the cargo and taking out of the hold. The Captain and the Company are not liable, among other things for damage due to inclemency of weather or other sources, before, during and after loading or unloading. Discharge shall be made to the quay, or by tackle at the option of the Company but at the expense of the consignee and at their risk.

342 Article 3. The Captain is not compelled to deliver the goods all at once. He has the right to deliver in instalments as the unloading proceeds. All cost of discharging and placing on land, including shifting of the goods, weighing, counting, measuring, etc., are at the expense of the goods, except where otherwise agreed. In all ports where the Captain and or company themselves handle the discharging the above mentioned transactions are charged for at the tariff of the Company.

Defendant's Exhibit "B"—Translation of Defendant's Exhibit A. 343

Article 4. The shipper declares to release the Captain from proceeding in any manner in disputes or expert proceedings in regard to the removal of the goods be that any port of transshipment or other ports. In cases where such proceedings take place they shall be had without any legal formalities.

Article 5. General average adjustments shall be had in Paris either under French laws or according to York/Antwerp rules, as the Captain or Company may choose by adjusters which are selected by mutual agreement. 344

Article 6. Reshipment or parcels at any port whatever shall be made by the agents of the Company or by his co-forwarders, at the expense and risk of the goods. The liability of the Company and the Captain shall cease at the moment when the goods are handed over to the forwarders who succeed them. In no case shall the shipper or consignee have recourse against the Company or the Captain for delays resulting from sojourn in the port of transshipment. 345

Article 7. Sealed money boxes and objects of value must be enclosed in boxes which are sealed at each seam, or in cases which are sealed at their openings, and the seal set into the wood. The imprint must be reproduced on the bill of lading. For such parcels, as for all others, the liability of the Company and the Captain begins on deck of the ship when the goods are loaded, and end there when discharged, even where the

346 *Defendant's Exhibit "B"—Translation of Defendant's Exhibit A.*

Company itself operates the loading and discharging.

Article 8. The Company and the Captain assume no liability in the loading and discharging of live stock which are shipped in the vessel; they are not liable for their sickness or accidents to them, nor for mortality thereof during the voyage, whatever the causes therefor may be where the discharging of animals is forbidden by
347 legal authorities after the arrival of the vessel, be that for whatever cause, the Captain has authority to have the animals which are on the bill of lading destroyed, and in such case there shall be no recourse against the ship or its owners.

Article 9. The owners of the ship have the right to take on board at any time dangerous merchandise, inflammables, acids and explosives and goods which are contraband of war and this fact shall not entitle the shippers or consignees to any indemnity for whatever reason.

348 Article 10. The shipper and consignee are jointly, and severally liable to the Captain, the Company and its agents for all consequential damage, whatever be the cause, resulting from the application of customs rulings. They are jointly and severally liable for payment of duty, penalties imposed by the customs or regie, etc., which may be charges against the Captain, the Company or its agent for any cause whatsoever.

Article 11. In case of loss of a parcel, or irregular delivery thereof, for which the Captain

Defendant's Exhibit "B"—Translation of Defendant's Exhibit A. 349

and the Company are liable, for any reason or at any place, such liability shall as regards each parcel lost not be in excess of the intrinsic value thereof at the Port of loading upon submitting of the original invoice, or as per declaration on the bill of lading, without any profit, damage, commission, brokerage, interest, etc. In case there is no declaration on the B/L this liability shall not go beyond one franc per cubic decimeter, or per kilo, at the option of the Company, 350
not beyond francs 1000 per parcel. In case of damage or shortage for which the Captain or the Company are liable no larger payment shall be exacted as indemnity than a *pro rata* amount calculated on the preceding valuable. In case of delay attributable to the Captain or the Company no damage shall be paid unless actual prejudice has been caused and the amount in no case exceed the freight on the damaged parcel.

Article 12. This B/L must be signed by the shipper; lack of such signature shall not affect its 351
validity of the clauses thereof, which whether printed or written are binding on the parties.

Article 13. The Company will insure the goods if ordered to do so by making declaration under an open policy specifically taken out for that purpose, the conditions of which are at the disposal of the shippers, it being understood that the Company accepts no joint liability of the underwriters and that its function is solely of a benevolent intermediary without any liability whatsoever.

352 *Defendant's Exhibit "B"—Translation of Defendant's Exhibit A.*

Article 14. Disputes resulting from the interpretation or execution of this bill of lading shall be submitted to the Court provided for in Rule 18 of the Commerce Court of the Seine.

In Witness Whereof I have signed 4 bills of lading which includes the one for the Captain and the Company all of the same tenure and of these one is binding, the others having no value.

353 Bordeaux January 31st, 1920.

Without Liability for Average, Breakage or Leaking or Loss From

P. Le Captaine PP,
Signature Shipper.

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(1) Commerce Code Book 2 (average) Title XII (Jettison and Contribution) annual of the
354 shipowners of France 1904, page 854.

(2) Circular of the Central Committee of shipowners.

Plaintiff's Exhibit No. 2. 355

I, SAMUEL GOODACRE, Secretary of the United States Shipping Board, do hereby state that as such secretary I have lawful custody and control of the seal, the records, papers and documents of the United States Shipping Board, including all the records, papers and documents in Formal Complaint proceedings before the Board filed under Section 22 of the Shipping Act, and including all the records and documents in Formal Complaint Proceeding of American Tobacco Company vs. Compagnie Generale 356
Transatlantique, Shipping Board Docket No. 13, and I hereby certify that the attachments are full, true and correct copies of the

Complaint filed April 28, 1921.
Answer to Complaint filed May 16, 1921.
Amendment to Paragraph 7 of Complaint filed June 28, 1921.
Answer to Amendment to Complaint filed July 23, 1921.
Complainant's Amended Exhibit "A".
Transcript of the stenographer's notes of 357
hearings held Feb. 24, and May 17 and 18, 1922 at New York City, N. Y. before Examiner H. E. Manghum and held May 12, 1925 at New York City, N. Y. before Examiner C. O. Arthur.
Report decided and entered July 17, 1923.
Supplemental Report and Order decided and entered Dec. 29, 1925.
Order entered July 27, 1926.

358 *Plaintiff's Exhibit No. 2.*

in said Docket No. 13, American Tobacco Company vs. Compagnie Generale Transatlantique, the originals of which are now on file and of record in the Office of the United States Shipping Board, Washington, District of Columbia, under my custody and control.

In Witness Whereof, I have hereunto set my hand and have hereto affixed the seal of the said United States Shipping Board this Sixth
359 day of October, 1927.

(Sgd) Samuel Goodacre,
Secretary of the United
(Seal) States Shipping Board.

360

361

Defendant's Exhibit C.

THE AMERICAN TOBACCO COMPANY, INC. Complainant, v. COMPAGNIE GENERALE TRANSATLANTIQUE, Respondent.	Docket No.—

362

Comes now the Complainant in the above entitled cause and respectfully shows:

I.

That the said Complainant is a corporation organized and existing under the laws of the State of New Jersey engaged in the manufacture of cigarettes and other tobacco products and the distribution thereof, and also cigarette papers in books, having its principal office at 111 Fifth Avenue, New York City, New York. 363

II.

That the said Respondent is a corporation organized and existing under the laws of the Republic of France, under the name Compagnie Generale Transatlantique, commonly known as the French Line with an office located at 17-19 State Street, New York City, New York, engaged

364 *Defendant's Exhibit C.*

as a common carrier in the transportation by water of passengers and property on the high seas on a regular route between ports in the Republic of France and the United States of America, and, as such common carrier, is subject to the provisions of the Federal Shipping Act of September 7, 1916.

III.

365 That during the period from April 7, 1919 to January 3, 1921, the said Complainant caused to be forwarded for its account various shipments of cigarette papers in books and cigarette paper in bobbins, as described in Exhibit A appended hereto, via steamships of the said Respondent from the ports of Bordeaux and Havre, France to the port of New York, United States of America.

IV.

366 That upon delivery of said shipments at the port of New York said Complainant paid to the Respondent charges aggregating $99,755.47 for transportation service, in accordance with the rates and charges set forth in the bills of lading issued at port of origin, expressed in American dollars.

V.

That during the period from April 7, 1919, to January 3, 1921, and prior thereto and subsequent thereto down to February 15, 1921, Respondent accepted for shipment from time to

time and transported for shippers other than the Complainant, shipments of cigarette papers in books and shipments of cigarette paper in bobbins, similar in all respects to the shipments above described made by this Complainant; and that on certain of such shipments, not only during the period above mentioned but prior thereto and subsequent thereto, the said Respondent fixed its charges for the service of transportation rendered to such shippers in French francs. The collection of such charges was made at the port of origin and the Respondent collected the charges for such service in French money.

VI.

That during the period from April 7, 1919, to January 3, 1921, Respondent accepted shipments from time to time and transported for the Complainant shipments of cigarette paper in books and shipments of cigarette paper in bobbins.

Attached hereto and made a part hereof, and entitled Exhibit A, is a statement showing, with respect to such shipments, the date the charges were paid, the date of delivery in New York to the Complainant, the name of the vessel, the description and quantity of the commodity, the port of loading, (referred to as origin) the destination, the weight or cubic contents (the weight being given where the freight rate was charged upon the basis of weight, and the cubic contents being given where the freight rate was charged upon measurement) the amount of the charge in American money, the amount that the Complain-

370 *Defendant's Exhibit C.*

ant claims should have been charged in American money on the basis of the charges made to shippers of similar merchandise referred to in paragraph V, and the reparation claimed.

The Respondent fixed its charges for the transportation at the amount set forth in Exhibit A for the service of transportation rendered to the Complainant not in French francs but in American dollars. The charges made against other shippers of similar merchandise,
371 referred to in paragraph V, between the same ports during the time under consideration, in francs, at the port of shipment, was not equivalent, at the prevailing or current rate of exchange, to the charge made in dollars against the Complainant. The rate charged and paid by such other shippers in francs and the rate charged and paid by the Complainant in dollars could be equalized only on assuming an arbitrary rate of exchange of 20c per franc, whereas the fact was, that during said time the current or prevailing rate of exchange fluctuated
372 between 16.95 and 5.85 cents per franc; that is to say, in fixing its rates for the same service upon similar merchandise as that herein described, the Respondent, with respect to the charges made against the Complainant, has converted a proper charge for transportation service, or what would be a proper charge in French francs, into a charge billed in terms of American money on an arbitrary basis of twenty cents per franc, when the prevailing rate of exchange was much less than twenty cents to the franc. Complainant alleges that the proper

charge against it should be the same as the charge made against such other shippers in francs converted into dollars at the prevailing rate of exchange at the time the charge was made. The amounts charged on each shipment are set forth in Exhibit A hereto attached in the column headed "As Charged Amount" and the proper charge, as above alleged, at the prevailing or current rate in francs is set forth in said Exhibit A in the column marked "Should be Amount," and the difference, being the amount claimed in detail on each shipment is set forth in such exhibit in column marked "Reparation Claimed".

VII.

That by reason of the facts recited in the foregoing paragraphs, the said Complainant has been subjected to the payment of charges for transportation which were, when exacted, unduly and unreasonably preferential to the other shippers in violation of Section 16 and unjustly discriminatory in violation of Section 17 of said Shipping Act, and have been damaged in the amount of $53,840.

WHEREFORE, the said Complainant prays that the said Respondent be required to answer the charges herein; that after due hearing and investigation an order be made, commanding said Respondent to cease and desist from the aforesaid violations of said statute, and to pay to the said Complainant by way of reparation for the unlawful charges hereinabove described the sum of $53,840, (which is the difference between the

376 *Defendant's Exhibit C.*

charges as paid by said Complainant on the shipments on the basis of five francs to one dollar and what these charges would have been on the basis of the actual rate of exchange in effect on the dates the shipments were forwarded) or such sum as to the Board shall seem proper as an award of damages under the provisions of the said Act for the violation thereof, and that such other and further orders be made as to the Board may seem proper in the premises.

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State of New York, }
County of New York, } ss.:

I, C. F. Neiley, on oath depose and say that I am the Secretary of The American Tobacco Company, Inc. the within named Complainant on whose behalf I make this affidavit; that I have read the foregoing complaint and know the contents thereof; and that the same is true.

C. F. Neiley.

378 Subscribed and sworn to before me, a notary public in and for the above-named county and State, this 29th day of March, 1921.

J. R. Cummings,
Notary Public, etc.

Jonathan H. Holmes,
Attorney for Complainant,
Address: 111 Fifth Avenue,
New York City
New York

Dated at New York City,
New York, March 29, 1921.

Exhibit A
Sheet No. 1.

The American Tobacco Company, Inc., Complainant)
v.) Docket No.
Compagnie Generale Transatlantique, Respondent)

BEFORE THE UNITED STATES SHIPPING BOARD

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Date Charges Paid	Date of Delivery	Name of Vessel	Commodity	Origin	Destination	Weight or Cubic Contents	As Charged-Rate Amount	Should be Rate Amount	Reparation Claimed
May 1, 1919	April 25, 1919	Chicago	100 cases Cigarette Books	Bordeaux	New York City	31.300M	$ 419.52	$ 355.53	$ 63.99
" 1, "	" 25, "	"	50 " "	"	"	15.650M	209.81	177.81	32.00
" 1, "	" 25, "	"	100 " "	"	"	31.300M	419.52	355.53	63.99
" 1, "	" 25, "	"	50 " "	"	"	15.650M	209.81	177.81	32.00
" 1, "	" 25, "	"	50 " "	"	"	15.650M	209.81	177.81	32.00
" 1, "	" 25, "	"	50 " "	"	"	15.650M	209.81	177.81	32.00
" 1, "	" 25, "	"	50 " "	"	"	15.650M	209.81	177.81	32.00
" 19, "	May 16, "	Hudson	50 " "	"	"	(18.000K)	104.45	86.04	18.41
" 19, "	" 16, "	"	100 " "	"	"	(18.000K)	208.85	172.03	36.82
" 19, "	" 16, "	"	150 " "	"	"	18.000K	313.30	258.07	55.23
" 19, "	" 16, "	"	58 " "	"	"	6,960K	121.21	99.84	21.37
July 31, "	July 29, "	Chicago	100 " "	"	"	20,800M	249.60	184.07	65.53
June 10, "	June 4, "	"	100 " "	"	"	20,800M	249.60	186.27	63.33
" 10, "	" 4, "	"	100 " "	"	"	20,800M	249.60	195.61	53.99
" 10, "	" 4, "	"	100 " "	"	"	20,800M	249.60	186.27	63.33
" 10, "	" 4, "	"	100 " "	"	"	20,800M	249.60	186.27	63.33
" 10, "	" 4, "	"	100 " "	"	"	20,800M	249.60	186.27	63.33
" 10, "	" 4, "	"	100 " "	"	"	20,800M	249.60	188.24	61.36
" 10, "	" 4, "	"	100 " "	"	"	20,800M	249.60	188.24	61.36
July 31, "	July 29, "	"	100 " "	"	"	20,800M	249.60	184.07	65.53
" 31, "	" 29, "	"	100 " "	"	"	20,800M	249.60	184.07	65.53
" 31, "	" 29, "	"	100 " "	"	"	20,800M	249.60	184.07	65.53
" 31, "	" 29, "	"	100 " "	"	"	20,800M	249.60	184.07	65.53
" 31, "	" 29, "	"	100 " "	"	"	20,800M	249.60	184.07	65.53
" 31, "	" 29, "	"	100 " "	"	"	20,800M	249.60	178.80	70.80
" 31, "	" 29, "	"	100 " "	"	"	20,800M	249.60	184.07	65.53
" 31, "	" 29, "	"	100 " "	"	"	20,800M	249.60	184.07	65.53

Date Charges Paid	Date of Delivery	Name of Vessel	Commodity	Origin	Destination	Weight or Cubic Contents	As Charged- Rate	As Charged- Amount	Should be Rate	Should be Amount	Reparation Claimed
July 31,1919	July 29,1919	Chicago	100 cases Cigarette Books	Bordeaux	New York City	20,800M		$ 249.60		$ 178.80	$ 70.80
" 31, "	" 29, "	"	100 " "	"	"	20,800M		249.60		184.07	65.53
" 31, "	" 29, "	"	200 " "	"	"	41,600M		499.20		368.14	131.06
Aug. 23, "	Aug. 21, "	Niagara	100 " "	"	"	20,800M		249.60		169.80	79.80
" 23, "	" 21, "	"	100 " "	"	"	20,800M		249.60		169.80	79.80
" 23, "	" 21, "	"	200 " "	"	"	41.600M		499.20		342.39	156.81
Sept. 9, "	Sept. 8, "	Chicago	100 " "	"	"	20,800M		249.60		153.13	96.47
" 9, "	" 8, "	"	200 " "	"	"	41,600M		499.20		306.26	192.94
Oct. 2, "	Oct. 1, "	Niagara	50 " "	"	"	25.900M		310.80		184.56	126.24
" 2, "	" 1, "	"	125 " "	"	"	64,750M		777.00		437.50	339.50
" 2, "	" 1, "	"	100 " "	"	"	20,800M		249.60		140.54	109.06
" 2, "	" 1, "	"	100 " "	"	"	20,800M		249.60		148.22	101.38
" 2, "	" 1, "	"	200 " "	"	"	41,600M		499.20		296.44	202.76
" 2, "	" 1, "	"	200 " "	"	"	41,600M		499.20		296.44	202.76
" 2, "	" 1, "	"	150 " "	"	"	31,200M		374.40		222.33	152.07
" 2, "	" 1, "	"	200 " "	"	"	41,600M		499.20		296.44	202.76
" 2, "	" 1, "	"	200 " "	"	"	41,600M		499.20		281.08	218.12
" 2, "	" 1, "	"	150 " "	"	"	31,200M		374.40		222.33	152.07
" 22, "	" 20, "	Chicago	50 " "	"	"	25,980M		311.76		186.68	125.08
" 22, "	" 20, "	"	100 " "	"	"	20,800M		249.60		149.46	100.14
" 22, "	" 20, "	"	100 " "	"	"	20,800M		249.60		149.46	100.14
Dec. 3, "	Dec. 1, "	St. Andre	50 " "	"	"	10.300K		164.80		96.37	68.43
" 3, "	" 1, "	"	50 " "	"	"	10.300K		164.80		96.37	68.43
" 3, "	" 1, "	"	50 " "	"	"	10,300K		164.80		96.37	68.43
" 3, "	" 1, "	"	100 " "	"	"	10,500K		168.00		97.11	70.89
" 3, "	" 1, "	"	100 " "	"	"	8,100K		129.60		75.79	53.81
" 3, "	" 1, "	"	100 " "	"	"	8,100K		129.60		75.79	53.81
" 3, "	" 1, "	"	100 " "	"	"	8,100K		129.60		75.79	53.81
" 3, "	" 1, "	"	100 " "	"	"	8,100K		129.60		75.79	53.81
" 3, "	" 1, "	"	200 " "	"	"	16,200K		259.20		149.83	109.37
" 4, "	" 4, "	Niagara	56 " "	"	"	15,120M		181.44		101.36	80.08
" 4, "	" 4, "	"	100 " "	"	"	20,800M		249.60		139.44	110.16
" 4, "	" 4, "	"	100 " "	"	"	20,800M		249.60		139.44	110.16
" 4, "	" 4, "	"	100 " "	"	"	20,800M		249.60		139.44	110.16
" 4, "	" 4, "	"	100 " "	"	"	20,800M		249.60		132.77	116.83
" 17, "	" 16, "	Chicago	100 " "	"	"	20,800M		249.60		127.35	122.25
" 17, "	" 16, "	"	100 " "	"	"	20,800M		249.60		127.35	122.25
" 17, "	" 16, "	"	100 " "	"	"	20,800M		249.60		127.35	122.25
" 17, "	" 16, "	"	100 " "	"	"	27,000M		324.00		165.31	158.69

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Date Charges Paid	Date of Delivery	Name of Vessel	Commodity	Origin	Destination	Weight or Cubic Contents	As Charged- Rate	As Charged- Amount	Should be Rate	Should be Amount	Reparation Claimed
Dec. 17,1919	Dec. 16,1919	Chicago	100 cases Cigarette Books	Bordeaux	New York City	27,000M		$ 324.00		$ 165.31	$ 158.69
May 1, "	April25, "	"	26 " "Paper	"	"	15,392M		206.35		174.87	31.48
" 1, "	" 25, "	"	162 " " "	"	"	95,904M		1,285.22		1,089.17	196.05
" 1, "	" 25, "	"	54 " " "	"	"	31,968M		428.48		363.12	65.36
" 1, "	" 25, "	"	48 " " "	"	"	28,416M		380.87		322.77	58.10
" 19, "	May 16, "	Hudson	44 " " "	"	"	10.777K		187.62		154.04	33.58
" 19, "	" 16, "	"	54 " " "	"	"	14,124K		245.85		204.53	41.32
" 19, "	" 16, "	"	48 " " "	"	"	11,627K		202.41		168.39	34.02
June 10, "	June 4, "	Chicago	45 " " "	"	"	24,210M		290.52		216.81	73.71
" 10, "	July 29, "	"	54 " " "	"	"	29.052M		348.63		262.92	85.71
July 31, "	" 29, "	"	48 " " "	"	"	26.448M		317.38		234.06	83.32
" 31, "	" 29, "	"	54 " " "	"	"	29,754M		357.05		263.31	93.74
" 31, "	" 29, "	"	138 " " "	"	"	86,940M		1,043.28		769.38	273.90
" 31, "	" 29, "	"	48 " " "	"	"	26,448M		317.38		234.06	83.32
" 31, "	" 29, "	"	25 " " "	"	"	13.775M		165.30		119.96	45.34
" 31, "	" 29, "	"	30 " " "	"	"	12.660M		151.92		112.04	39.88
Aug. 23, "	Aug. 21, "	Niagara	50 " " "	"	"	34,200M		410.40		279.18	131.22
" 23, "	" 21, "	"	50 " " "	"	"	34,200M		410.40		279.18	131.22
" 23, "	" 21, "	"	50 " " "	"	"	34,200M		410.40		279.18	131.22
" 23, "	" 21, "	"	48 " " "	"	"	26.448M		317.38		215.90	101.48
" 23, "	" 21, "	"	38 " " "	"	"	25,992M		311.90		213.92	97.98
" 23, "	" 22, "	La Touraine	24 " " "	Havre	"	15.960M		191.52		122.77	68.75
" 26, "	" 25, "	La Lorraine	32 " " "	"	"	22,304M		267.64		170.47	97.17
Sept. 3, "	Sept. 2, "	Rochambeau	26 " " "	"	"	13,988M		181.83		112.24	69.59
" 22, "	" 14, "	La Savoie	25 " " "	"	"	14,100M		169.20		100.95	68.25
" 25, "	" 21, "	La Touraine	54 " " "	"	"	31,266M		375.19		221.74	153.45
Nov. 1, "	Oct. 27, "	La Lorraine	64 " " "	"	"	33,600M		445.20		258.84	186.36
" 1, "	" 27, "	"	67 " " "	"	"	35,175M		466.06		270.97	195.09
" 18, "	Nov. 18, "	Lafayette	54 " " "	"	"	31,266M		414.27		231.44	182.83
" 18, "	" 18, "	"	25 " " "	"	"	14,475M		191.79		107.15	84.64
Dec. 3, "	Dec. 1, "	St. Andre	34 " " "	Bordeaux	"	6,365K		101.84		58.87	42.97
Nov. 25, "	Nov. 24, "	La Savoie	50 " " "	Havre	"	28.950M		383.58		206.23	177.35
Dec. 6, "	Dec. 4, "	Jacques Cartier	54 " " "	"	"	12,515K		215.88		112.44	103.44
" 8, "	" 1, "	La Touraine	12 " " "	"	"	7,104M		94.12		48.57	45.55
" 8, "	" 6, "	La Lorraine	17 " " "	"	"	9,367M		124.10		65.32	58.78
" 12, "	" 10, "	Rochambeau	52 " " "	"	"	31,564M		418.21		213.37	204.84
" 20, "	" 19, "	Lafayette	48 " " "	"	"	29,136M		386.05		181.24	204.81
Jan. 31,1920	Jan. 30,1920	Niagara	100 " "Books	Bordeaux	"	27,000M		324.00		155.77	168.23
" 31, "	" 30, "	"	100 " " "	"	"	27,000M		324.00		155.77	168.23

Date Charges Paid	Date of Delivery	Name of Vessel	Commodity	Origin	Destination	Weight or Cubic Contents	As Charged Rate	As Charged Amount	Should be Rate	Should be Amount	Reparation Claimed
Jan. 31,1920	Jan. 30,1920	Niagara	100 cases Cigarette	Bordeaux	New York City	27,000M		$ 324.00		$ 155.77	$ 168.23
" 31, "	" 30, "	"	100 " Books	"	"	27,000M		324.00		155.77	168.23
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		120.00	129.60
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		120.00	129.60
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		120.00	129.60
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		120.00	129.60
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		120.00	129.60
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		120.00	129.60
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		120.00	129.60
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		120.00	129.60
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		120.00	129.60
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		116.09	133.51
" 31, "	" 30, "	"	100 " "	"	"	20,800M		249.60		116.09	133.51
March 2, "	Feb. 28, "	Chicago	200 " "	"	"	54,000M		648.00		244.53	403.47
" 2, "	" 28, "	"	100 " "	"	"	27,000M		324.00		122.26	201.74
" 2, "	" 28, "	"	100 " "	"	"	20,800M		249.60		94.19	155.41
" 2, "	" 28, "	"	100 " "	"	"	20,800M		249.60		94.19	155.41
" 2, "	" 28, "	"	100 " "	"	"	20,800M		249.60		94.19	155.41
" 2, "	" 28, "	"	200 " "	"	"	41,600M		499.20		188.38	310.82
" 13, "	March 12, "	Frankinoer	100 " "	"	"	11,300K		180.80		64.57	116.23
" 13, "	" 12, "	"	100 " "	"	"	11.300K		180.80		64.57	116.23
" 13, "	" 12, "	"	100 " "	"	"	8,100K		129.60		46.29	83.31
" 13, "	" 12, "	"	100 " "	"	"	8,100K		129.60		46.29	83.31
" 13, "	" 12, "	"	100 " "	"	"	8,100K		129.60		46.29	83.31
" 13, "	" 12, "	"	100 " "	"	"	8,100K		129.60		46.29	83.31
" 13, "	" 12, "	"	100 " "	"	"	8,100K		129.60		46.29	83.31
" 16, "	" 15, "	Niagara	100 " "	"	"	20,800M		249.60		87.58	162.02
" 16, "	" 15, "	"	200 " "	"	"	41,600M		499.20		175.16	324.04
May 6, "	May 5, "	"	200 " "	"	"	22,600K		361.60		127.32	234.28
" 6, "	" 5, "	"	100 " "	"	"	11,300K		180.80		60.88	119.92
" 6, "	" 5, "	"	100 " "	"	"	11,300K		180.80		59.87	120.93
" 6, "	" 5, "	"	100 " "	"	"	8,100K		129.60		43.93	85.67
" 6, "	" 5, "	"	100 " "	"	"	8,100K		129.60		45.63	83.97
" 6, "	" 5, "	"	100 " "	"	"	8,100K		129.60		43.78	85.82
" 6, "	" 5, "	"	100 " "	"	"	8,100K		129.60		43.64	85.96
" 6, "	" 5, "	"	100 " "	"	"	8,100K		129.60		42.63	86:97

Date Charges Paid	Date of Delivery	Name of Vessel	Commodity	Origin	Destination	Weight or Cubic Contents	As charged Rate	As charged Amount	Should be Rate	Should be Amount	Reparation Claimed
June 22,1920	June 18,1920	Caroline	100 cases Cigarette Books	Bordeaux	New York City	11,300K		$ 180.80		$ 54.46	$ 126.34
" 22, "	" 18, "	"	100 " "	"	"	11,300K		180.80		54.46	126.34
" 22, "	" 18, "	"	100 " "	"	"	11,300K		180.80		66.72	114.08
" 22, "	" 18, "	"	100 " "	"	"	8,100K		129.60		39.04	90.56
" 22, "	" 18, "	"	100 " "	"	"	8,100K		129.60		39.04	90.56
" 22, "	" 18, "	"	100 " "	"	"	8,100K		129.60		47.82	81.78
" 30, "	" 28, "	Strathlorne	100 " "	"	"	11,300K		180.80		70.08	110.72
" 30, "	" 28, "	"	100 " "	"	"	8,100K		129.60		50.23	79.37
" 30, "	" 28, "	"	200 " "	"	"	16,200K		259.20		100.47	158.73
" 29, "	" 28, "	Niagara	100 " "	"	"	27,000M		378.00		144.27	233.73
July 24, "	July 22, "	Farnsworth	200 " "	"	"	54,000M		756.00		311.11	444.89
" 24, "	" 22, "	"	100 " "	"	"	27,000M		378.00		155.56	222.44
" 24, "	" 22, "	"	100 " "	"	"	27,000M		378.00		155.56	222.44
" 24, "	" 22, "	"	100 " "	"	"	27,000M		378.00		155.56	222.44
" 24, "	" 22, "	"	200 " "	"	"	41,600M		582.40		239.67	342.73
" 24, "	" 22, "	"	100 " "	"	"	20,800M		291.20		119.84	171.36
" 24, "	" 22, "	"	100 " "	"	"	20,800M		291.20		119.84	171.36
" 24, "	" 22, "	"	100 " "	"	"	20,800M		291.20		119.84	171.36
Aug. 12, "	Aug. 12, "	Caroline	100 " "	"	"	27,000M		378.00		143.73	234.27
" 12, "	" 12, "	"	100 " "	"	"	27,000M		378.00		143.73	234.27
" 12, "	" 12, "	"	200 " "	"	"	54,000M		756.00		287.45	468.55
" 12, "	" 12, "	"	100 " "	"	"	27,000M		378.00		143.73	234.27
" 12, "	" 12, "	"	100 " "	"	"	20,800M		291.20		110.72	180.48
" 12, "	" 12, "	"	200 " "	"	"	41,600M		582.40		221.44	360.96
" 12, "	" 12, "	"	100 " "	"	"	20,800M		291.20		110.72	180.48
" 12, "	" 12, "	"	100 " "	"	"	20,800M		291.20		110.72	180.48
" 12, "	" 13, "	Niagara	100 " "	"	"	27,000M		378.00		148.24	229.76
" 18, "	" 13, "	"	100 " "	"	"	20,800M		291.20		112.00	179.20
" 18, "	" 13, "	"	100 " "	"	"	20,800M		291.20		112.00	179.20
" 18, "	" 13, "	"	100 " "	"	"	20,800M		291.20		112.00	179.20
Sept. 15, "	Sept. 14, "	Western	100 " "	"	"	27,000M		378.00		136.96	241.04
" 15, "	" 14, "	"	100 " "	"	"	27,000M		378.00		136.96	241.04
" 15, "	" 14, "	"	100 " "	"	"	27,000M		378.00		135.00	243.00
" 15, "	" 14, "	"	100 " "	"	"	27,000M		378.00		132.63	245.37
" 15, "	" 14, "	"	100 " "	"	"	27,000M		378.00		132.63	245.37

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Date Charges Paid	Date of Delivery	Name of Vessel	Commodity	Origin	Destination	Weight or Cubic Contents	As Rate	Charged Amount	Should be Rate	Should be Amount	Reparation Claimed
Sept. 15,1920	Sept. 14,1920	Western	100 cases Cigarette Books	Bordeaux	New York City	27,000M		$ 378.00		$ 136.96	$ 241.04
" 15, "	" 14, "	"	100 " " "	"	"	20,800M		291.20		104.00	187.20
" 15, "	" 14, "	"	100 " " "	"	"	20,800M		291.20		102.18	189.02
" 15, "	" 14, "	"	200 " " "	"	"	41,600M		582.40		204.35	378.05
" 15, "	" 14, "	"	100 " " "	"	"	20,800M		291.20		105.51	185.69
" 15, "	" 14, "	"	100 " " "	"	"	20,800M		291.20		105.51	185.69
" 15, "	" 14, "	"	200 " " "	"	"	41,600M		582.40		211.01	371.39
" 15, "	" 14, "	"	200 " " "	"	"	41,600M		582.40		211.01	371.39
" 30, "	" 30, "	Farnsworth	100 " " "	"	"	27,000M		378.00		127.27	250.73
" 30, "	" 30, "	"	200 " " "	"	"	30,200M		422.80		142.36	280.44
" 30, "	" 30, "	"	100 " " "	"	"	20,800M		291.20		98.05	193.15
" 30, "	" 30, "	"	100 " " "	"	"	27,000M		378.00		127.27	250.73
" 30, "	" 30, "	"	100 " " "	"	"	20,800M		291.20		98.05	193.15
" 30, "	" 30, "	"	200 " " "	"	"	21,600M		302.40		101.82	200.58
" 30, "	" 30, "	"	100 " " "	"	"	27,000M		378.00		127.27	250.73
" 30, "	" 30, "	"	200 " " "	"	"	21,600M		302.40		101.82	200.58
Oct. 19, "	Oct. 18, "	Caroline	100 " " "	"	"	20,800M		291.20		97.39	193.81
" 19, "	" 18, "	"	100 " " "	"	"	27,000M		378.00		126.42	251.58
" 19, "	" 18, "	"	100 " " "	"	"	20,800M		291.20		97.39	193.81
" 19, "	" 18, "	"	100 " " "	"	"	20,800M		291.20		98.05	193.15
" 19, "	" 18, "	"	100 " " "	"	"	27,000M		378.00		127.27	250.73
" 19, "	" 18, "	"	200 " " "	"	"	30,200M		422.80		142.36	280.44
" 19, "	" 18, "	"	200 " " "	"	"	23,200M		324.80		109.36	215.44
Nov. 20, "	Nov. 19, "	Montana	200 " " "	"	"	32,400M		453.60		147.75	305.85
" 20, "	" 19, "	"	100 " " "	"	"	20,800M		291.20		94.85	196.35
" 20, "	" 19, "	"	200 " " "	"	"	22,400M		313.60		102.15	211.45
Dec. 22, "	Dec. 21, "	Fasterly	200 " " "	"	"	22,400M		313.60		95.32	218.28
" 21, "	" 21, "	Caroline	100 " " "	"	"	27,000M		378.00		114.89	263.11
" 21, "	" 21, "	"	200 " " "	"	"	22,400M		313.60		95.32	218.28
" 21, "	" 21, "	"	100 " " "	"	"	20,800M		291.20		88.51	202.69
" 21, "	" 21, "	"	200 " " "	"	"	22,400M		313.60		95.32	218.28
" 21, "	" 21, "	"	200 " " "	"	"	32,400M		453.60		137.87	315.73
" 21, "	" 21, "	"	100 " " "	"	"	20,800M		291.20		88.51	202.69
" 21, "	" 21, "	"	100 " " "	"	"	27,000M		378.00		114.89	263.11
" 21, "	" 21, "	"	200 " " "	"	"	22,400M		313.60		95.32	218.28
" 21, "	" 21, "	"	200 " " "	"	"	32,400M		453.60		137.87	315.73
" 21, "	" 21, "	"	100 " " "	"	"	20,800M		291.20		88.51	202.69
Jan. 7, "	Jan. 5, "	La Peruse	54 " " Paper	Havre	"	12.890M		170.79		75.91	94.88
" 8, "	" 7, "	La Touraine	54 " " "	"	"	35,964M		476.51		232.44	244.07

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Date Charges Paid	Date of Delivery	Name of Vessel	Commodity	Origin	Destination	Weight or Cubic Contents	As Charged Rate	As Charged Amount	Should Be Rate	Should Be Amount	Reparation Claimed.
Jan. 7,1920	Jan. 6,1920	La Peruse	52 cases Cigarette Papers	Havre	New York City	12,325K		$ 163.30		$ 72.58	$ 90.72
" 7, "	" 6, "	"	50 " " "	"	"	11,896K		157.62		70.05	87.57
" 20, "	" 19, "	La Touraine	54 " " "	"	"	32.776M		434.90		202.28	232.62
" 22, "	" 21, "	Lafayette	54 " " "	"	"	31,968M		423.57		190.80	232.77
" 22, "	" 21, "	"	48 " " "	"	"	28,416M		376.51		169.60	206.91
" 28, "	" 27, "	La Savoie	26 " " "	"	"	15,782M		209.10		90.52	118.58
Feb. 16, "	Feb. 12, "	Rochambeau	54 " " "	"	"	29,700M		393.52		148.50	245.02
" 16, "	" 12, "	"	54 " " "	"	"	31,968M		423.57		159.84	263.73
March 8, "	March 6, "	La Touraine	54 " " "	"	"	32,022M		424.28		150.45	273.83
Feb. 25, "	Feb. 24, "	La Savoie	54 " " "	"	"	32,022M		424.28		147.32	276.96
" 25, "	" 24, "	"	54 " " "	"	"	31,056M		411.49		142.88	268.61
March 8, "	March 6, "	La Touraine	54 " " "	"	"	32.022M		424.28		150.45	273.83
" 24, "	" 23, "	La Savoie	54 " " "	"	"	31,212M		413.55		154.31	259.24
" 27, "	" 26, "	La Peruse	54 " " "	"	"	12,783K		220.49		83.20	137.29
April 7, "	April 5, "	LaFayette	8 " " "	"	"	4,856M		64.34		22.65	41.69
June 2, "	June 1, "	La Lorraine	2 " " "	"	"	.958M		12.68		4.68	8.00
April 7, "	April 5, "	Lafayette	52 " " "	"	"	29,380M		389.28		137.07	252.21
" 7, "	" 5, "	"	54 " " "	"	"	30,456M		403.54		142.09	261.45
" 20, "	" 17, "	Rochambeau	52 " " "	"	"	34,532M		458.87		151.94	306.93
" 20, "	" 17, "	"	52 " " "	"	"	31,564M		416.23		137.82	278.41
" 20, "	" 17, "	"	54 " " "	"	"	36,564M		484.46		160.42	324.04
" 21, "	" 20, "	La Touraine	54 " " "	"	"	35,694M		472.93		146.87	326.06
" 26, "	" 26, "	La Touraine	54 " " "	"	"	32.724M		433.58		133.41	300.17
May 6, "	May 5, "	Leopoldina	144 " " "	"	"	87,264M		1156.24		344.12	812.12
June 9, "	June 9, "	La Torraine	34 " " "	"	"	21,624M		286.51		110.20	176.31
" 9, "	" 9, "	"	54 " " "	"	"	34,344M		455.05		175.02	280.03
" 9, "	" 9, "	"	54 " " "	"	"	34,344M		455.05		175.02	280.03
" 9, "	" 9, "	"	54 " " "	"	"	34.344M		455.05		175.02	280.03
" 9, "	" 9, "	"	56 " " "	"	"	35.515M		471.91		181.50	290.41
" 30, "	" 29, "	La Savoie	54 " " "	"	"	32,778M		630.97		251.38	379.59
" 30, "	" 29, "	"	56 " " "	"	"	33,992M		654.34		260.69	393.65
July 7, "	July 6, "	La Lorraine	54 " " "	"	"	(106.764M		2055.20		856.33	1198.87

Date Charges Paid	Date of Delivery	Name of Vessel		Commodity			Origin	Destination	Weight or Cubic Contents	As Charged Rate	As Charged Amount	Should be Rate	Should be Amount	Reparation Claimed
July 13, 1920	July 9,1920	La Touraine	54	cases	Cigarette	Papers	Havre	New York City	33,534M		$ 645.52		$ 265.65	$ 379.87
Aug. 5, "	Aug. 5, "	Jacques Cartier	119	"	"	"	"	"	67,096M		1023.21		421.07	602.14
" 14, "	" 14, "	Rochambeau	78	"	"	"	"	"	43,992M		846.84		302.44	544.40
" 14, "	" 14, "	"	54	"	"	"	"	"	30.456M		586.27		209.38	376.89
" 18, "	" 17, "	La Lorraine	54	"	"	"	"	"	34,844M		670.74		246.60	424.14
" 24, "	" 24, "	Lafayette	108	"	"	"	"	"	68,688M		1322.24		479.07	843.17
" 31, "	" 30, "	La Savoie	46	"	"	"	"	"	26,608M		512.20		182.28	329.92
Sept.20, "	Sept.18, "	Rochambeau	54	"	"	"	"	"	32.778M		499.86		170.60	329.26
" 20, "	" 18, "	"	108	"	"	"	"	"	65,556M		999.72		341.20	658.52
" 20, "	" 18, "	"	55	"	"	"	"	"	33,328M		508.25		173.46	334.79
Oct. 13, "	Oct. 13, "	La Lorraine	56	"	"	"	"	"	32,368M		623.08		211.21	411.87
" 18, "	" 16, "	Hannington Court	54	"	"	"	"	"	31,212M		475.97		159.19	316.78
" 18, "	" 16, "	"	54	"	"	"	"	"	31,212M		475.97		159.19	316.78
" 18, "	" 16, "	"	54	"	"	"	"	"	31,212M		475.97		159.19	316.78
" 23, "	" 22. "	La Touraine	56	"	"	"	"	"	32,368M		493.61		162.91	330.70
" 26, "	" 26, "	La Savoie	54	"	"	"	"	"	30,510M		587.31		191.93	395.38
" 26, "	" 26, "	"	56	"	"	"	"	"	32,368M		623.08		203.62	419.46
Nov. 6, "	Nov. 4, "	Lepoldina	54	"	"	"	"	"	30.510M		465.28		151.06	314.22
" 9, "	" 9, "	La Lorraine	56	"	"	"	"	"	32.368M		623.08		197.80	425.28
" 20, "	" 19, "	La Touraine	56	"	"	"	"	"	32.368M		623.08		181.66	441.42
Dec. 18, "	Dec. 16, "	Roussillon	56	"	"	"	"	"	32.424M		494.46		150.81	343.65
" 18, "	" 16, "	"	57	"	"	"	"	"	33.003M		503.29		153.50	349.79
" 18, "	" 18, "	La Touraine	57	"	"	"	"	"	31.495M		606.27		180.37	425.90
" 30, "	" 30, "	Rochambeau	56	"	"	"	"	"	31.640M		609.07		180.89	428.18
Jan. 11,1921	Jan. 4,1921	La Lorraine	108	"	"	"	"	"	51.020M		1174.63		348.28	826.35
" 11, "	" 4, "	"	54	"	"	"	"	"	30.510M		587.31		173.55	413.76
" 21, "	" 15, "	La Touraine	54	"	"	"	"	"	30.510M		587.31		172.38	414.93
" 21, "	" 15, "	"	59	"	"	"	"	"	33.335M		651.13		191.11	460.02
											$99,755.47		$45,915.47	$53,840.00

Defendant's Exhibit C. 403

UNITED STATES OF AMERICA,

UNITED STATES SHIPPING BOARD.

AMERICAN TOBACCO COMPANY, INC.,
Complainant,
against
COMPAGNIE GENERALE TRANSATLANTIQUE,
Respondent. 404

The respondent, appearing in the above-entitled cause by Joseph P. Nolan its attorney, answers the complaint of the complainant and respectfully shows:

FIRST: This respondent appears in this proceeding under protest and objects to the jurisdiction of this tribunal upon the ground that the respondent is a Corporation subject to, and organized under the laws of, the Republic of France, and is engaged wholly in foreign commerce between ports in the Republic of France and ports throughout the world, including the Port of New York, in the United States of America. 405

And the respondent further alleges that it is not engaged in interstate or intrastate commerce in the United States of America.

Respondent, therefore, alleges that this tribunal is without jurisdiction to try the matters set forth in the complaint.

SECOND: Respondent admits the allegations of paragraph "First" of the complaint.

406 *Defendant's Exhibit C.*

THIRD: Respondent denies that it is subject to the provisions of the Federal Shipping Act of September 7th, 1916, and admits all the other allegations contained in paragraph "Second" of the complaint.

FOURTH: Respondent admits, subject to verification of the amount of charges paid to the respondent, the allegations contained in paragraphs "Third" and "Fourth" of the complaint.

407 FIFTH: Answering the allegations contained in paragraph "Fifth" of the complaint this respondent admits that during the period referred to it accepted for shipment from time to time, and transported for shippers other than the complainant, shipments of cigarette papers in books, and shipments of cigarette paper in bobbins; and that on certain of such shipments, during the period above mentioned, the respondent accepted in the Republic of France payment in French francs of its charges for the service of transportation rendered to such shippers, and
408 that the collection of such charges was made at the port of origin, and that the respondent collected the charges for such service in French money.

And the respondent denies the other allegations contained in said paragraph "Fifth" of the complaint.

SIXTH: Answering the allegations contained in paragraph "Sixth" of the complaint respondent admits so much thereof as relates to its acceptance of shipments from the complainant, and admits "Exhibit A" to be apparently correct, but demands that proof of its correctness be fur-

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nished on the trial of this cause, and denies that any other amount or amounts than the amount or amounts stated in "Exhibit A" should have been charged to the complainant.

The respondent admits that its charges for transportation at the amounts set forth in "Exhibit A" were fixed by mutual agreement in American dollars and not in French francs.

The respondent admits the allegations as to the prevailing rate of exchange, and that the rate of exchange fluctuated.

410

And the respondent denies each and every other allegation contained in paragraph "Sixth" of the complaint.

SEVENTH: Answering the allegations contained in paragraph "Seventh" of the complaint respondent denies the same.

AS AND FOR A FURTHER ANSWER AND DEFENSE TO THE MATTERS SET FORTH IN THE COMPLAINT, THIS DEFENDANT ALLEGES:

EIGHTH: That during the period covered by the allegations of the complaint this respondent 411
treated all shippers of commodities with whom it did business on the same terms and conditions, and made no special rates to any shipper of any class of goods other than the rates published by it in its tariffs, which tariff rates were published widely, and were open to inspection and available to the shippers of all commodities, including the complainant herein.

And this respondent further alleges that the rates charged to the complainant, and set forth in "Exhibit A", annexed to the complaint, were the rates charged by the respondent to shippers

412 *Defendant's Exhibit C.*

of similar commodities for the same service and upon the same terms of payment.

And this respondent further alleges that the rates so charged to the respondent were in accordance with the said published tariff rates, photographic copies of which are annexed hereto marked respectively "Exhibits 1, 2 and 3".

That in the said published tariff rates, and forming a part thereof, is the following:

> "Important Notice. For shipments ac-
> 413 cepted with freight payable at destination, the rates of this tariff shall be converted into dollars on the fixed basis of five francs per dollar".

NINTH: That during the period covered by the allegations of the complaint, and for some time prior thereto, by reason of the change in the exchange rate for French francs, French money was greatly depreciated in its value in the United States, although in the Republic of France, where respondent has its home office, and
414 from whence the shipments in suit originated, French money had its value corresponding with the prices of commodities, rates of wages and general expenses. That, in order to induce shippers of goods from the Republic of France to the United States, and other ports foreign to France, to pay the transportation charges for such goods in the Republic of France, where French money was at its true value, this respondent created a tariff rate (copies of which marked "Exhibits 1, 2 and 3" are annexed hereto), for the various commodities transported on its steamers, payable in advance in francs, and pro-

vided in the said published tariff rate that if the goods should be shipped by the shipper payable at destination, the rate of such francs must be payable at five (5) francs to the dollar. That had the complainant, in common with other shippers of similar goods, paid for the transportation of its commodities before the same left the Republic of France, the complainant could have paid the same in actual francs, but this respondent alleges that the complainant, for its own convenience, and disregarding the benefits which would accrue to this respondent if the said shipments were prepaid in francs, elected to have its goods shipped payable at destination, in accordance with the published tariff rate, "Exhibits 1, 2 and 3", and at the rate of exchange so published, five (5) francs to the dollar.

TENTH: And this respondent further alleges that all of the commodities set forth in "Exhibit A", annexed to the complaint, were transported by this respondent under agreements in writing constituting contracts of affreightment and Bills of Lading, executed in the Republic of France for a valuable consideration, wherein and whereby the rate of five (5) francs to the dollar was agreed upon as the rate to be paid by the complainant. That said contracts of affreightment were entered into in the Republic of France in accordance with the terms of the laws of the Republic of France, and were valid contracts under the laws of said Republic of France, where the said contract of affreightment was entered into between the complainant and the respondent.

WHEREFORE respondent prays that the complaint herein be dismissed on such terms as to

418 *Defendant's Exhibit C.*

the Board may seem just and reasonable, and that such other or further order or orders may be made as to the Board may seem proper in the premises.

COMPAGNIE GENERALE TRANSATLANTIQUE,
By ANT. BORDES,
General Representative for the United States and Canada.

JOSEPH P. NOLAN,
Attorney for Respondent,
419 25 Broad Street, New York City.

State of New York, }
County of New York, } ss.:

ANTOIN BORDES, on his oath deposes and says:

That I am the General Representative for the United States and Canada of the Compagnie Generale Transatlantique, the within-named respondent, on whose behalf I make this affidavit; that I have read the foregoing answer and know the contents thereof, and that the same is true.
420

ANT. BORDES.

Subscribed and sworn to before me, a Notary Public in and for the Above-named County and State, this 12th day of May, 1921.

HUGH D. SMYTH,
Notary Public, Kings County 302,
Kings County Register 2306,
Certificate filed New York County 908,
New York County Register 2682.

(Seal)

Defendant's Exhibit C. 421

BEFORE THE
UNITED STATES SHIPPING BOARD.

AMERICAN TOBACCO COMPANY, INC., Complainant, against COMPAGNIE GENERALE TRANSATLANTIQUE, Respondent.	Docket No. 13.

422

Comes now the Complainant in the above entitled cause and respectfully requests:

That the original complaint be amended by substitution of the following paragraph instead of paragraph seven in the original complaint:

VII.

That by reason of the unjust and unreasonable regulations and practices of said Respondent in the receiving of the Complainant's shipments at the Ports of Havre and Bordeaux, France, and the delivering of said shipments at the Port of New York, and by reason of the other facts recited in the foregoing paragraphs, the said Complainant has been subjected to the payment of charges for transportation which were, when exacted, unjust and unreasonable in violation of the second paragraph of Section 17 and unduly and unreasonably preferential to the other shippers and in violation of Section 16, and unjustly discriminatory in violation of the first

423

424 *Defendant's Exhibit C.*

paragraph of Section 17 of said Shipping Act and said Complainant has been injured in the amount of $53,840.

State of New York, }
County of New York, } ss.:

CHARLES F. NEILEY, on his oath deposes and says:

That I am the Secretary of The American To-
425 bacco Company, Inc., the within-named Complainant on whose behalf I make this affidavit; that I have read the foregoing amendment to the complaint herein and know the contents thereof; and that the same is true.

(Signed) CHARLES F. NEILEY.

Subscribed and sworn to before me,
a Notary Public in and for the
above named County and State,
this 27th day of June, 1921.

J. R. CUMMINGS (Signed),
426 Notary Public,
New York County No. 210,
New York Register No. 2140,
My Commission Expires March 30, 1922.

JONATHAN H. HOLMES,
Attorney for the Complainant,
Office and Post Office Address,
111 Fifth Avenue,
New York City, N. Y.

Dated at New York City, June , 1921.

Defendant's Exhibit C. 427

UNITED STATES OF AMERICA,

UNITED STATES SHIPPING BOARD.

AMERICAN TOBACCO COMPANY, INC., Complainant, against COMPAGNIE GENERALE TRANSATLANTIQUE, Respondent.	Docket No. 13.

428

The respondent answering the amended paragraph "Seventh" of the complainant's complaint, denies the same.

WHEREFORE the said respondent prays that the amended complaint herein may be dismissed.

COMPAGNIE GENERALE TRANSATLANTIQUE,
By OSCAR R. CAUCHOIS,
Acting General Representative for
the United States and Canada. 429

JOSEPH P. NOLAN,
Attorney for Respondent,
25 Broad Street, New York City.

State of New York, }
County of New York, } ss.:

OSCAR R. CAUCHOIS, on his oath deposes and says:

430 *Defendant's Exhibit C.*

That I am the Acting General Representative for the United States and Canada of the Compagnie Generale Transatlantique, the within-named respondent, on whose behalf I make this affidavit; that I have read the foregoing answer to the amended complaint and know the contents thereof, and that the same is true.

OSCAR R. CAUCHOIS.

431 Subscribed and sworn to before me,
a Notary Public in and for the
above-named County and State,
this 21 day of July, 1921.

HUGH D. SMYTH,
Notary Public, Kings County 302,
Kings County Register 2306,
Certificate filed New York County 908,
New York County Register 2682.

(Seal)

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Defendant's Exhibit C. 433

BEFORE THE
UNITED STATES SHIPPING BOARD.

AMERICAN TOBACCO COMPANY, INC., Complainant, against COMPAGNIE GENERALE TRANSATLANTIQUE, Respondent.	Docket No. 13.

434

New York, February 24, 1922.

Met pursuant to notice, at ten thirty o'clock a. m.

Before:
H. E. MANGHUM, Chief Examiner.

APPEARANCES:

JONATHAN H. HOLMES, Esq., Attorney for the Complainant, and GEORGE C. LUCAS, Esq., Ass't. Traffic Manager, (111 Fifth Avenue, New York City), for the Complainant. 435

JOSEPH P. NOLAN, Esq., (25 Broad Street, New York City), Attorney for the Respondent.

Examiner Manghum: Gentlemen, let us come to order. The United States Shipping Board has set down for hearing at this time and place,

436 *Defendant's Exhibit C.*

the case of the American Tobacco Company, Inc., complainant, vs. Compagnie General Transatlantique, respondent, Docket No. 13.

Who appears for the complainant?

Mr. Holmes: Jonathan H. Holmes and George C. Lucas.

Examiner Manghum: For the defendant?

Mr. Nolan: Joseph P. Nolan.

Examiner Manghum: By its complaint, as amended, complainant alleges that on collect
437 shipments of cigarette papers from Havre and Bordeaux, France, to New York, moving during the period April 7, 1919, to January 3, 1921, the respondent charged and collected from complainant, freight rates on a fixed basis of five francs to the dollar, at New York, while on prepaid shipments of such papers between the same ports and during the same period, the respondent accepted from certain of complainant's competitors payment of the freight rates in francs at their current value in France, and that such practice was unjust and unreasonable, and sub-
438 jected the complainant to the payment of unjust, unreasonable, unduly prejudicial and unjustly discriminatory rates, in violation of Sections 16 and 17 of the Federal Shipping Act.

Complainant asks the Board to effect the discontinuance of said practice and to award reparation.

By its answer respondent admits that it transported shipments of cigarette papers from Havre and Bordeaux, France, to New York, during the period aforesaid, and that it charged and collected from complainant, rates on the fixed

basis of five francs to one dollar at New York, and accepted at French ports of origin from other shippers, prepayment of freight charges in francs at their current value in France, in accordance with its published tariffs and bills of lading. 439

Does that correctly state the issue?

Mr. Holmes: Yes.

Mr. Nolan: Yes.

Examiner Manghum: We will proceed with the complainant in its direct case.

Mr. Holmes: I move to amend the complaint and amend Exhibit A, thereto attached. I will state briefly that when we began the preparation of this case, we realized that there were three bases on which the rate of exchange might be fixed, according to different theories of the action, one the date when the goods were delivered to the shipper in France—that is the date of the bill of lading; another the date the charge was made, and the third the date of payment. Accordingly, we have seen fit to amend our Exhibit A, and amend the complaint accordingly. Primarily, the amendment simply incorporates these three theories which I mentioned before. We rely upon the rate in francs, or the difference between the rate in francs and the rate we paid as of the date of billing. That is, our contention is that we should have been charged the rate in francs on the date of billing—the francs should have been converted in United States money at the rate that prevailed in New York on the date the charge was made—that is, the date of the freight bill, but as we realized that these other two or three theories might be 440 441

442 *Defendant's Exhibit C.*

used, we propose to put in the proof of the rate in france on those two other sets of dates.

Now, I have prepared here a written form of this motion, which perhaps I need not read, as I have stated it briefly, I believe there is no objection to that.

Mr. Nolan: The respondent makes no objection to the amendment, except that the respondent desires to make a motion for the dismissal of this proceeding upon the ground of the lack
443 of jurisdiction of the court, and reserving that motion, if the court will reserve that motion temporarily, and not waiving my right to make such a motion, I have no objection to the amendment as proposed, and I would ask the court to reserve my right to make that motion.

Examiner Manghum: Mr. Holmes, or Mr. Nolan, I mean this is merely a renewal of the motion previously made.

Mr. Nolan: Yes, that I made in writing. I want to spread it on the record in extenso.

Examiner Manghum: And as allowed once.

444 Mr. Nolan: I want to keep that motion before the Court at all times, because we intend naturally to press it most vigorously.

Examiner Manghum: You have covered it in your answer, too.

Mr. Nolan: Yes, I think we have. Has the amendment been allowed, Mr. Commissioner?

Examiner Manghum: The amendment will be allowed.

(See book of exhibits).

Mr. Nolan: Then I ask that the answer be deemed made, reserving the right to object to the

jurisdiction of the Court—the answer as previously interposed, be deemed to apply to the amendment, and that the answer be considered as denying the correctness of the assertions of the amendment. 445

Examiner Manghum: The answer will be considered in that light. Are you ready with the witness?

Mr. Holmes: The first witness I intend to call to produce the bills of lading from the Customs House. I believe he is not here. Anyone here from the Custom House? 446

(No response).

Mr. Holmes: There is the subpoena with the proof of service attached. Now, I may say that that need not delay us, because I believe you are still willing to admit certain things.

Mr. Nolan: I am willing to admit certain things.

Mr. Holmes: Although I may find it necessary to put these bills of lading in when they are here, to prove certain other things.

Mr. Nolan: I think we might select one of two bills of lading and put those in, and stipulate that all of the other bills of lading are similar. 447

Mr. Holmes: Let us postpone that a little bit, because Mr. Nolan is willing to admit the dates, and when we have the dates of payment, we can go on with our witness from the Guaranty Trust Company and let him go, and that will prove our rates of exchange, both in France and in the United States.

Examiner Manghum: Let him come up then, and take the stand.

448 *Defendant's Exhibit C.*

Mr. Nolan: Before the witness is called, Mr. Commissioner, I would like to make my motion for a dismissal of the proceeding now formally on the record.

On behalf of the respondent company, I move to dismiss the complaint herein, and I object to the jurisdiction of the Court herein, upon the ground that the complaint fails to show that the Shipping Board has any jurisdiction over the respondent in regard to the matters alleged in
449 the complaint or over the subject matter of the complaint.

Upon the further ground that this Court has no jurisdiction, because the transaction complained of in the complaint were not intrastate or interstate commerce, but were, on the contrary, contracts for the carriage of goods by the respondent, a common carrier in the transportation by water of passengers and freight on the high seas, between the ports of the Republic of France and the United States.

Upon the ground that the complaint does not
450 show that the respondent was engaged as a common carrier, in the transportation by water, of passengers and freight between ports of the same state, or ports of different states of the United States.

That the complaint does not show that the respondent is engaged as a common carrier, in the transportation by water, of passengers and freights on any ships carrying the flag of the United States.

On the further ground that the transactions involved in the complaint, originated in the

Republic of France, and were to be executed wholly upon vessels carrying the flag of the Republic of France, and, therefore, were French territory. 451

Upon the general ground that this Court has no jurisdiction over the subject matter.

Examiner Manghum: Let the record show, in line with the previous action of the Board, the motion will stand disallowed.

Mr. Nolan: Exception.

Examiner Manghum: Show an objection and exception by counsel for the respondent. 452

Mr. Nolan: May I ask this, just to clarify the proceeding from now on? Is it at all necessary for us to file a written exception under your rules of practice or procedure, or is it sufficient to take the exception just on the record?

Examiner Manghum: Under the rules of practice, what is known as the Examiner's Report is handed down. That is served on you, and you file your exceptions to that.

Mr. Holmes: Mr. Nolan, let us see if we can not shorten this and clarify it a little bit. I wonder if it would not be the easiest way if you would take the full stipulation of mine and strike out what you won't agree to? Let us put that on the record, what you will agree to. 453

Mr. Nolan: Suppose you mark your stipulation as an exhibit for identification? Do you think, sir, that would be a good way to do?

Examiner Manghum: Let us identify it, so we will know what we are talking about.

Mr. Nolan: This, sir, that I am talking about, is a proposed stipulation, and I suggest that Mr.

454 *Defendant's Exhibit C.*

Holmes mark that as an exhibit for identification, and call it an offer instead of a stipulation, and then I will say on the record, referring to the offer of complainant's counsel, Exhibit so and so for identification, I admit column so and so and column so and so.

Examiner Manghum: Let me have a copy.

Mr. Nolan: I think that would clarify it, and we would move along a little more speedily.

Mr. Holmes: Of course, Mr. Nolan admitting
455 column is not anything, unless you connect them up, according to this statement here. Each statement connects the figures in that column with some other column so as to make them connect.

Mr. Nolan: That is what I say. I say referring to your offer, Exhibit so and so for identification, I admit the correctness of the statements referring to Column 3; I admit the correctness of the statement referring to column 6 and so on. In that way, we will have it straight on the record.

456 Examiner Manghum: Let us identify this then, as proposed offer, Exhibit 1.

Mr. Holmes: You mean for me to propose it as an admission?

Examiner Manghum: Just for identification, so we will know of what we are speaking.

Mr. Holmes: Why would it not be better, Mr. Nolan, beginning with the top of the stipulation, to admit right down to the first thing that you won't admit, and then strike it out?

Mr. Nolan: All right.

Mr. Holmes: Let us have a regular stipulation,

457

admitted by both sides, but everything you do not admit just stricken out. Then we can supply, when we get our bills of lading, the things that are not admitted.

Examiner Manghum: I believe it would be better to read it into the record, paragraph by paragraph.

Mr. Holmes: I would prefer that, too. Let us begin at the following stipulation as to facts.

Mr. Nolan: All right. The following stipulation as to facts is made by counsel for the 458
respondent, on behalf of the respondent, and counsel for the complainant on behalf of the complainant:

The following facts are admitted:

Referring to the matter in the complaint which is concerned with Exhibit A, as amended, and that exhibit itself.

Concerning Columns 4 and 5 of said exhibit, it is admitted that shipments of commodities were made, consigned to the American Tobacco Company, this complainant, on steamships be-
longing to this respondent, of the description in- 459
dicated in Column 5, in the quantities indicated on the same line in Column 4.

It is admitted that in Column 3 is stated the name of the vessel upon which the shipment was made, and in Column 6 is stated the port from which the vessel sailed, and in Column 7, the port of destination of the shipment.

In Column 8 is stated the weight or cubic measurement of each shipment respectively; the figures indicate cubic meters where the letter "M" follows the figures, and the figures indicate

460 *Defendant's Exhibit C.*

thousand kilos where the letter "K" follows the figures.

(The mark that might be mistaken for a comma, is, of course, a decimal point; if, on the weight figures, the decimal point were regarded as a comma, then the figures would indicate full kilos, not thousand kilos.)

In Column 10, the respondent admits, is stated the amount of money in United States currency, paid by the complainant upon each shipment or
461 item, indicated respectively on the same line under the other columns referred to.

Column 11 I cannot admit, and Column 12.

Examiner Manghum: How about Column 9?

Mr. Nolan: Column 9 I cannot admit.

Examiner Manghum: Column 12?

Mr. Nolan: Nor Column 12.

Examiner Manghum: Column 13?

Mr. Nolan. 13, no.

Examiner Manghum: Column 14?

Mr. Nolan: In Column 14, respondent admits is stated the date of the bill of lading of each
462 shipment.

Columns 15 and 16, I cannot admit. Column 17, I cannot admit. Column 18, I cannot admit.

Column 19: Respondent admits that in Column 19 is stated the date of the freight bill rendered by the respondent to the complainant for each shipment.

Mr. Holmes: Just let me make a note of what was admitted, because I might get a little confused. In Column 19 is stated the date of the freight bill; then what?

Mr. Nolan: Rendered by the respondent to

463

the complainant for each shipment. Column 24—

Examiner Manghum: How about the intervening ones, 20, 21, 22, and 23?

Mr. Nolan: Those I cannot admit, because they are all computations, based upon the correctness of other columns which I have refused to admit.

In Column 24 the respondent admits is correctly stated the date the freight charges were received by the respondent from the complainant.

464

Mr. Holmes: Now, just a minute. The date the freight charges were received? All right.

Mr. Nolan: The rest I cannot admit. Now, Mr. Commissioner, it might be possible for me to make a general admission as to these other columns, that the computations themselves, as mere figures, are correct, but not admitting the correctness—that is, the columns that are computations, only, of other columns, that those computations are correct, without admitting the correctness of the columns.

465

Mr. Holmes: I think that might save the Commissioner some little bother.

Examiner Manghum: With those reservations, the stipulation will be received along with Exhibit A.

Mr. Nolan: I will make it this way: Counsel for the respondent further admits that where, in the columns in Exhibit A, there appear computations, based upon other columns, which have not been admitted by the respondent, respondent does admit that the computations themselves, as figures, are correct, but does not admit that the

466 *Defendant's Exhibit C.*

facts are binding, or that the original figures are correct.

Mr. Holmes: All right.

Mr. Nolan: That will save you quite a lot of time.

Mr. Holmes: Yes, I should think so. That is bulky.

Examiner Manghum: How about No. 10?

Mr. Lucas: He admitted that.

Mr. Nolan: That, sir, I admitted.

467 (The paper referred to is admitted in evidence and marked Exhibit A.)

(See book of exhibits.)

Mr. Holmes: Mr. Wagner, will you take the stand, please?

Eugene T. Wagner, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct Examination by Mr. Holmes:

468 Q. Mr. Wagner, what is your occupation? A. I am a foreign exchange clerk in the Guaranty Trust Company.

Q. How long have you been in that position? A. About four years.

Q. Did you hold that position in May, 1919, to January, 1921? A. I did.

Q. During all of that time? A. Yes.

Q. What is the character of your work there? A. Well, we buy and sell exchange.

Q. Is it necessary for you to keep in touch, day by day, with French exchange? A. Not only day by day, but from one minute to the other.

469

Q. And during the period that I have referred to, from May, 1919, to January, 1921, it was your duty to do so at that time? A. It was.

Q. Do you have some recollection now of the trend of French exchange during that period? A. Well, a very vague recollection.

Q. You know it was not at a premium? A. No, it was not at a premium.

Q. You, perhaps, could tell roughly at any time, about, somewhere approximately, what the exchange rate was? A. Approximately, yes.

470

Q. You could not tell on any particular date that I might pick out, I suppose, precisely what the French exchange was on that particular day? A. Not without referring to our records.

Q. You have some record from which you could refresh your recollection? A. I have here records indicating the closing rates for each day for 1919, 1920 and 1921.

Q. Where were those records made? A. Those records were made at the close of every day, from actual transactions, from the closing rates of the market.

471

Q. What company office do they come from? A. Beg pardon?

Q. Where did you get them? A. Well, at the close of the market, we call up different brokers, and each one quotes his rate, and we have our own rates based on actual transactions, and we strike an average and that is the rate which we put in the book as being the closing rate on one particular day.

Q. And what purpose do you keep that book for? A. For reference purposes.

472 *Defendant's Exhibit C.*

Q. Do you act upon it in business transactions? A. No, it is merely a reference book.

Q. But the rates of exchange that you got, you know were acted upon by business people at that time? A. They are actual rates; they represent actual rates—actual transactions.

Q. Who kept the book? A. I kept the book partly, and another man part of the time.

Q. Did you make some of the entries? A. I made some of the entries, yes.

473 Q. As to the entries which you made, do you know they were correct at the time you made them? A. I do know it.

Q. And as to the ones that were made by others, you are also familiar with them?

Mr. Nolan: I object to that. He does not know whether they are correct or not.

Mr. Holmes: Well, he examined them.

By Mr. Nolan:

474 Q. Did you refer to the book at the time or about the time the entries were made? Did you have occasion to refer to it? A. Well, those rates were checked. One man makes them up, and another man checks them, and most of these rates I have checked or made out myself—not all of them, but they are absolutely correct, I can vouch for that.

Mr. Nolan: I ask that that be stricken out; a volunteered answer of the witness, and a conclusion.

Defendant's Exhibit C.

475

By Examiner Manghum:

Q. What is the relation of the other man with regard to yourself? Is he under your supervision? A. Yes.

Mr. Nolan: Mr. Commissioner, will you give me a ruling on that?

Examiner Manghum: He stated the other man was working under his supervision.

476

Mr. Nolan: I say I have objected to the answer as being a conclusion, and as a volunteered answer, "they are absolutely correct".

Examiner Manghum: I think with this later statement here, that the record is kept under his supervision, his answer is proper.

Mr. Nolan: I press the objection to the answer.

Examiner Manghum: Objection and exception.

477

Mr. Nolan: Thank you.

By Mr. Holmes:

Q. Do you have occasion to refer to this book from time to time, after the entries are made? A. Every day.

Q. You knew the entries from day to day, did you not? A. I did, yes.

Q. With your knowledge of the current rate of exchange, as it varied from day to day, you would have known that these were wrong when you had

478 *Defendant's Exhibit C.*

occasion to refer to them, if they were wrong, would you not?

Mr. Nolan: I object to that line of examination. It is purely argumentative.

Mr. Holmes: Well, Mr. Commissioner, he was referring back to this book every day. He knew, in his own mind, every day, what the rate of exchange was. If he had occasion to refer to the book, and
479 he was in charge of this business, naturally he would have discovered if they were wrong, and he knows they must have been right at the time they were made. It seems to me that is perfectly competent and pertinent.

Mr. Nolan: There has not been a name of a concern he called up to verify, whether they were the leading dealers in exchange or anything else, on which to base this testimony.

Mr. Holmes: Well, he has mentioned
480 that he called up several people.

Examiner Manghum: It is not in yet, the book is not in yet. He can explain where he got his figure from and just how he compiled the figures shown in the book.

The Witness: Well, we make a record of every transaction which we make in the course of the day. At the close of the day, we have our own market on which we will buy or sell exchange. Then, we call up, as a rule, three of the leading foreign exchange brokers, and we get their closing figures, which are compiled from the dif-

ferent banks. We compare our rates and the brokers' rates, and we strike an average which we list in our book as being the closing rate of that day.

Q. Who are these people that you are accustomed to call up? A. Hirsch, Lilienthal & Company, Ernest Rosenfeld and Heil & Company.

Q. Did you call these people up usually or always? A. Usually, I would not say always.

Q. But each day did your company have certain transactions in foreign exchange? A. Yes. 482

Q. And it was to verify the accuracy of the rate on which you transacted business, that you called up these other people at the end of the day; is that right? A. Well, our transactions were made with those brokers, so it was not necessary to verify those. We called them up merely to get the market at the close of the day.

Q. You did not call them up for the purpose of keeping this book? A. No.

Q. But you called them up for the purpose of closing a business transaction, is that right? A. 483 We called them up at the close of the day to verify whether our own market agreed with theirs.

Q. On each day, after you had noted the transactions which your company had, and verified the rate that you had thereby obtained, by those other brokers or banks, you called up, was this book prepared, and the rate noted for each day? A. Yes.

Q. And was it noted either by you or by somebody who was acting under your supervision? A. It was.

484 *Defendant's Exhibit C.*

Q. You were responsible, were you, for the correctness of those figures in the course of business to your employers? A. Yes.

Q. And the man who made them, in case you did not make them, was responsible to you? A. Yes.

Q. And this record was kept for a business purpose? A. It was.

Q. Have you any present recollection, Mr. Wagner, of the rate of exchange, in French francs in
485 New York, on the 28th day of April, 1919?

Mr. Nolan: Do not look at the book as yet, Mr. Wagner, please?

A. No; it was somewhere between five and six francs to the dollar.

Q. What is the normal, usual rate in normal times, approximately? A. Five francs eighteen and a fraction for one dollar.

Q. This figure you have given for April 20, 1918, is an estimate—

486

Mr. Nolan: Why, he has not given any figure for April.

Examiner Manghum: Five and six.

Mr. Nolan: Beg your pardon.

Q. You do not undertake to say that that is exactly correct? A. No, it is not correct.

Q. I think I forgot to ask this question: These records that we have been speaking of here, you produced them from the records of the Guaranty Trust Company? A. Yes.

Q. Have you any way of refreshing your rec-

ollection as to the exact rate on April 28, 1919? A. By referring to the record.

Q. Will you refer to the record and see what the rate of exchange in French francs was? A. On April 8th—

Mr. Nolan: Just a moment. Finish your question, then I want to make an objection.

Mr. Holmes: Read the question, please?

(The question was repeated by the stenographer.)

Mr. Holmes: Cut that out.

By Mr. Holmes:

Q. Will you refer to that record and see if it refreshes your recollection as to the rate?

Mr. Nolan: Now, Mr. Commissioner, I object to any testimony from this witness as to the rate of French francs during the period involved in this litigation, upon the ground that his testimony is only from one source. It has not been shown that it is the proper source, or that it is the regular market, or that it has been fixed by those in the trade as a regular market rate. Upon the further ground that the witness is not qualified to testify as to what was the rate on the dates in question.

Mr. Holmes: Do you want to hear any argument from me?

Examiner Manghum: The witness will be allowed to refresh his memory from the records he has. The objection will be overruled.

490 *Defendant's Exhibit C.*

Mr. Nolan: Exception, please.

Examiner Manghum: Let the record show an exception.

The Witness: On what date?

Q. I think the question was can you refresh your recollection? A. Yes, I can.

Q. Having refreshed your recollection, will you state what was the rate of exchange, in French francs in New York, on April 28, 1919?

491 Mr. Nolan: For the purpose of saving time, may it be considered that I have taken an objection to every question which may be asked this witness, on this question of exchange, upon the same grounds?

Examiner Manghum: Yes.

Mr. Nolan: And may I have a similar exception?

Examiner Manghum: Yes.

Mr. Nolan: Thank you.

492 A. On April 28th, French francs closed at 6.05½ franc for one dollar.

Mr. Nolan: I will stipulate, so as to save time, that this witness will testify that the rate of francs given in Columns 15 and 19, and the rate of dollars given in Columns 16 and 20, are as stated on Exhibit A, but I won't admit their correctness.

Mr. Lucas: You mean New York exchange should be Columns 20 and 25?

Mr. Nolan: Columns 20 and 25; reserving, however, with the stipulation, the ob-

493

jections and exceptions which have been already noted.

Examiner Manghum: Yes, sir; that takes in Columns 15 and 16.

Mr. Nolan: No; should be Columns 20, 21, 25 and 26.

Examiner Manghum: That is of Exhibit A to the stipulation.

Mr. Nolan: As amended.

Mr. Holmes: In view of this objection, I think I will ask him a few more questions.

494

Q. Did your bank and your department of the bank have dealings, nearly every day, in French exchange, during the period I have mentioned? A. Every day.

Q. Did you buy and sell French exchange? A. Every day.

Q. What did you have to do with such transactions? A. Well, I probably effected the purchase and sale on every day myself.

Q. And these other brokers or bankers you have mentioned, what was their business? A. I have mentioned only brokers. They would either act in our behalf in buying or selling, or they would make us offers or bids in behalf of other banks, and in case a transaction was closed, it was closed through a broker.

495

Q. Then, their figures and your figures, as I understand it, represent actual transactions? A. They do.

Q. Were you responsible—were you in charge of these transactions, this trading in French ex-

496 *Defendant's Exhibit C.*

change during this time? A. Well, to a certain extent.

Q. If you made a mistake— A. Well, the company had to stand by it, if I made a mistake. I mean in case of an actual transaction.

Q. But you were dealing in actual transactions? A. Yes.

Q. Did you, outside of your own work in office hours, or even in office hours, read exchange rates in the newspapers or bulletins or anything? A.
497 I did, yes.

Q. Were you accustomed to do that daily or otherwise? A. Yes, as a matter of interest.

Q. By reason of your occupation? A. Yes.

Q. You were interested in those matters, and would customarily look at the exchange rates quoted in the newspapers from day to day? A. I would, yes.

Q. During that period? A. Yes.

Mr. Nolan: I admit the witness will testify that those were the rates. I do not
498 admit their correctness. I am saving your asking him the same question as to each item. If he is qualified for one, he is qualified for all. I will admit he has verified them from the book, if you want that. I will save you as much as possible.

By Mr. Holmes:

Q. I do not suppose you can testify for any particular date without refreshing your recollection, could you? A. No.

Q. Well, I will ask you to refresh your recol-

499

lection, then, and testify, if you can after refreshing your recollection, what was the rate of exchange in New York in French francs on the following dates, and then each date will be a question.

Examiner Manghum: Just a minute. Counsel for respondent has admitted that the figures shown on Exhibit A, under the columns specified, 20, 21, 25 and 26, are identical with the rates as shown in the book from which the witness is going to refresh his memory on those dates. Now, there is no necessity for going over that.

500

Mr. Lucas: Only this, Mr. Examiner, that the witness did not prepare this statement, and we want to verify this against his record, itself, although his record was the source of it.

Mr. Nolan: Counsel for respondent admits the verity of it, so far as the record is concerned.

Mr. Holmes: You think that is sufficient? The witness has not apparently on the record, verified these things, and Mr. Nolan simply admits that he would, if he didn't verify them, testify to something that he does not know whether it is so or not.

501

Examiner Manghum: Mr. Nolan admits that if he refers to his book and gives the figures, they will be the same as shown on your exhibit.

Mr. Holmes: I know he does.

502 *Defendant's Exhibit C.*

Examiner Manghum: Why take the time to check them back and forth, when he has already admitted that they will be the same figures.

Mr. Holmes: I do not think that is an adequate admission; to admit that the witness, if he did do something, would prove something, does not prove it.

Examiner Manghum: Your exhibit will be in no better position, if he should read
503 every item in there that is on here. I certainly do not want to take the time to read all of those figures specifically, in as much as they are admitted to be the same figures that are in the book, and from which he is going to refresh his memory.

Mr. Holmes: I know, but this is quite an important case. Perhaps you are entirely right and I am entirely wrong, but it does not appear to me that a few moments, or even a half an hour or so, is really to be seriously considered, if there is any ques-
504 tion, as there is in my mind a question whether there is an adequate admission and proof on the record of that fact. He simply says if the witness did look over these figures, which he has not done, he would testify that they were so and so. Now, if this gets up on appeal somewhere, I would be very shaky about that.

Mr. Nolan: I have given an absolute admission, which you could not get any more out of the witness if you examined him for a week, than I stipulated.

Defendant's Exhibit C. 505

Examiner Manghum: I do not see how you can improve your record any by having the figures read from the book to the exhibit, in as much as they are admitted that they are the same. That is deemed sufficient.

Mr. Lucas: Suppose we just put in the extreme figures, Mr. Examiner, and then the trend will show that the rate of exchange varied between those dates.

Hr. Holmes: No, I do not think that. 506
Perhaps we can put in those things that I sent.

By Mr. Holmes:

Q. Mr. Wagner, I sent you some figures the other day in a letter. Did you verify those? A. I did.

Q. In connection with this? A. Yes.

Q. Have you got them with you? A. Yes.

Q. You produce here two lists, consisting of three columns each, each list having a date, with a rate of exchange in francs and dollars along- 507
side of it, and state whether you have refreshed your recollection from the book you have referred to, and checked these figures and found them to be correct, as the rates of exchange on the dates in question in each case? A. I have.

Mr. Nolan: That is the same objection, of course, Mr. Examiner, and exception.

Mr. Holmes: Now, let us see. Now, we can get that admission again?

Mr. Nolan: Now, you have got it worse, because you have got two sets of figures.

508 *Defendant's Exhibit C.*

Mr. Lucas: These are the same figures.

Mr. Nolan: You will have to call some one to prove that.

Mr. Holmes: Well, they prove themselves. This is for identification.

Examiner Manghum: Do you want this to go in?

Mr. Holmes: Yes, I will offer that in evidence, and that admission still stands as it did before.

509 Mr. Nolan: Oh, yes; an admission once made on the record stands for all purposes.

Examiner Manghum: These are admitted under the same conditions as the figures in columns 20, 21, 25 and 26 were admitted. We will call these Wagner Exhibts 1 and 2.

(The lists were received in evidence and marked Wagner Exhibits 1 and 2. See book of exhibits.)

Mr. Nolan: Will you please allow me an

510 exception to the admission, on the grounds that I have stated, the competency of the witness and the source?

Examiner Manghum: Yes. Mr. Holmes, have you copies of these?

Mr. Holmes: They are cut away from the same thing as this exhibit here.

Mr. Nolan: I won't make any objection as to that, if Mr. Holmes will state that they are identical with this exhibit which he sent to me, that is all.

Mr. Holmes: That is right.

Defendant's Exhibit C.

By Mr. Holmes:

Q. Are you familiar with the French publication called the "Bulletin de Correspondence"? A. I am.

Q. Just what do you know about it? A. Why, it is a daily sheet which is published in Havre and contains the rate of exchange, and cotton market and coffee market, and it is issued for the information of bankers and merchants at Havre and vicinity in France.

Q. Is it regarded as an authority? A. It is.

Q. Is it part of your business to know what papers are authorities? A. It is.

Q. Was this paper an authority during the period from April, 1919 to January, 1921? A. It was.

Mr. Nolan: Now, just a minute. I object to that line of examination, also, Mr. Examiner, calling for conclusions pure and simple.

Examiner Manghum: I think the witness had better state what the paper is.

Mr. Holmes: Well, Mr. Examiner, the witness is familiar with all things having to do with financial matters in foreign exchange, and he is testifying as to the reputation of this paper. It seems to me that is entirely competent.

Examiner Manghum: He can testify as to whether or not it is a general market paper, circularized as giving market quotations.

514 *Defendant's Exhibit C.*

Mr. Nolan: Whether it is an authority or not, it is for you, Mr. Examiner, to determine, not this witness.

Examiner Manghum: The Board will determine the weight that is to be given to it.

Mr. Holmes: I intended to ask him, not whether it was an authority, but whether it was considered an authority.

The Witness: It is.

515 Mr. Nolan: No, I object to that. When you tell what paper it is, the Examiner will determine then whether or not it is an authority and what weight is to be given to it.

Mr. Holmes: If it is considered an authority by men in the business, it would seem that it would have the same weight with the Commission in determining whether it was an authority. What else would determine with the Commission whether it was an authority or not?

516 Mr. Nolan: Bring out who uses it and how they use it. That is how you determine whether it is an authority or not.

Mr. Holmes: We have not got to that, yet. We are still on this.

Mr. Nolan: I ask that the answer be stricken out.

Mr. Holmes: I will strike the question out.

By Mr. Holmes:

Q. Was this paper considered an authority?

Defendant's Exhibit C.

517

Mr. Nolan: That I object to as calling for a conclusion. The way to prove it is an authority is to prove it is used in what circles, what news it published and how many people in the trade used it.

Examiner Manghum: Objection sustained.

Q. Where is the paper used and read? A. In Havre and in the North of France.

Q. Do you know how extensive the publication of it is—the circulation is? A. No, I do not know. I have seen it in almost every office I have been in around Havre.

518

Mr. Holmes: May I take an exception to that exclusion of testimony?

Examiner Manghum: Yes, sir; objection and exception.

Q. How many offices was that that you have seen it in in Havre? A. I have seen it in three offices.

519

Q. How many had you visited? A. Three.

Q. What offices were they? A. One bank and a cotton firm and a coffee firm.

Mr. Nolan: What were their names?

The Witness: The bank is the Credit Havre, and the cotton firm is the Compagnie Cottoniere.

Q. Have you been much in France? A. I have been there, yes.

520 *Defendant's Exhibit C.*

Q. During the period that I have mentioned, April, 1919, to January, 1921? A. No.

Q. You were not there? A. No.

Q. Was it part of your duties to know what the exchange was in France, from day to day, as well as what the exchange was in New York, on French francs from day to day? A. It was.

Q. Was there very much difference in France and New York on the same date? A. Not very much, no.

521 Q. If you wanted to find out the rate of exchange in France on a certain date, how would you go about it? A. Why, I would refer to one of the standard publications.

Q. Well, what are the standard publications?

Mr. Nolan: That is objected to as a conclusion, what publications would he refer to. Object to the word "standard."

Examiner Manghum: I think that is a conclusion. The witness, it seems to me, should be asked about this paper, as to whether or not it is used by the trade gen-

522 erally, and questions along that line.

Mr. Holmes: Well, exception.

By Mr. Holmes:

Q. Do you know whether this paper is used by people dealing in foreign exchange—this paper, the "Bulletin de Correspondence," that we have spoken of?

Mr. Nolan: That is objected to as immaterial. That does not establish its validity.

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Mr. Holmes: I will strike it out, because I am out of the order I was proceeding in anyway. Read the last question, please.

(The question was repeated by the Stenographer.)

Q. What publications would you refer to, to get the rate of exchange in France?

Mr. Nolan: That is objected to as immaterial and irrelevant.

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Examiner Manghum: Objection overruled.

Mr. Nolan: Exception, please.

Examiner Manghum: Allowed.

A. Well, in that part of France, I would refer to this "Bulletin de Correspondence."

Q. What do you mean by that part of France? A. In Havre and in the north of France, because this is the standard publication.

Mr. Nolan: I ask that that be stricken out, "this is the standard publication."

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Examiner Manghum: Strike it out.

Q. Do you know whether this "Bulletin de Correspondence" is used in the United States? A. No.

Q. No occasion to use it in the United States, is there? A. No.

Q. In addition to seeing it in certain business places in France, when you were there, what other grounds have you for believing it to be a standard authority on the rate of exchange?

526 *Defendant's Exhibit C.*

Mr. Nolan: That is objected to as immaterial.

Examiner Manghum: I ruled on that once, and it seems to me we should refrain from using the conclusion "standard."

Mr. Holmes: Well, I should not have used that, of course.

Q. What reason have you for regarding this
527 publication as an authority?

Mr. Nolan: Objected to as immaterial and as calling for an incompetent answer.

Examiner Manghum: Objection sustained.

Mr. Holmes: Well, he said that he would look to this paper for information in regard to the rate of exchange. He has given one reason why he regarded it as an authority. It seems to me entirely proper, if there are any other reasons that he can give besides seeing it in the bank and the
528 brokerage house over there—if there are any other reasons he could give for regarding it as a proper publication to turn to, that he should state them on the record.

Examiner Manghum: He can state whether or not he would refer to it, but the question whether or not it is the standard publication, is clearly a conclusion.

Mr. Holmes: I withdraw that question about being a standard.

Mr. Nolan: You substituted another word, "authority."

Defendant's Exhibit C.

Mr. Holmes: I asked him why he regarded it. May I ask him this question? I do not want to press a question too far, if you think you have already ruled upon it, but why would you turn to this publication?

Mr. Nolan: That is objected to as immaterial. A thousand men might have a thousand reasons.

Mr. Lucas: Just ask him for his—

Examiner Manghum: I think that is a proper question.

Mr. Nolan: Exception.

The Witness: Well, this publication contains the main rates of exchange, and further contains the prices of the main commodities, like cotton and coffee, and the main products which are dealt in in Havre, and everybody is using it and basing their information on it.

Mr. Nolan: Now, I move to strike that out. He has only seen it in three places. He says everybody is using it. I do not want the Court to believe everybody in Havre is using a one sheet newspaper, like a broker's poster that you find in everybody's office in New York. May I have a ruling on that, Mr. Examiner, that everybody is using it? I move that it be stricken out.

Examiner Manghum: That is stricken out. The witness testified he had seen it in three places.

532 *Defendant's Exhibit C.*

By Mr. Holmes:

Q. What reason have you to assume that the quotations are correct in this Bulletin de Correspondence, as a rule?

Mr. Nolan: That is objected to as immaterial.

Examiner Manghum: Overruled.

Mr. Nolan: Exception, please.

533 The Witness: It is a circulated sheet, which contains nothing else but business information, and it is published for the purpose of conveying this information before the regular newspapers can. It contains only important market quotations, and foreign exchange rates. It has no news section at all. It is a strictly business publication.

Q. In your business in the Guaranty Trust Company, did you ever have occasion, in the course of business, to act upon information that
534 you obtained from this paper? A. No, I was not in business in France.

Q. Do you know whether the Paris office of the Guaranty Trust Company puts any dependence upon the information contained in this paper?

Mr. Nolan: Just a minute, Mr. Wagner. I object to that, if your Honor please. That is calling for hearsay evidence.

Mr. Holmes: Well, he worked for the Guaranty Trust Company. He is engaged in foreign exchange, and he probably knows

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what the people that are doing business in foreign exchange on the other side do—what they depend upon.

Examiner Manghum: He can testify whether or not he knows that they do or do not depend upon it.

Mr. Holmes: Read the question.

(The question was repeated by the Stenographer.)

Q. Do you know?

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Mr. Nolan: Have you my objection noted?

Examiner Manghum: Yes.

Mr. Nolan: May I have an exception?

Examiner Manghum: Yes.

Q. Do you know? A. I do not know. It is a Havre publication. I know the Havre office, not the Paris.

By Examiner Manghum:

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Q. Havre office of what? A. The Guaranty Trust Company.

Mr. Nolan: I ask that it be stricken out.

By Mr. Holmes:

Q. Then the Guaranty Trust Company has an office in Havre? A. Yes.

Mr. Nolan: I ask that the sentence "The Havre office relies on it," be stricken out.

538 *Defendant's Exhibit C.*

It was not in response to any question. It was volunteered.

Examiner Manghum: Weren't you asking in regard to the Havre office?

Mr. Holmes: I asked the Paris office of the Guaranty Trust. He said, "I don't know, but the Havre office does." Mr. Nolan moves it be stricken.

Q. Do you know whether the Havre office—

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Mr. Nolan: May I have a ruling on that?

Examiner Manghum: Strike it out.

Q. Do you know whether the Havre office of the Guaranty Trust Company puts dependence in its business transactions on the French exchange quotations, in dollars, of this "Bulletin de Correspondence"?

Mr. Nolan: That is objected to as incompetent, irrelevant and immaterial, and calling for an answer based upon hearsay.

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Examiner Manghum: Overruled; exception allowed.

Q. I ask, do you know? A. I do, yes.
Q. Does it? A. It does.
Q. Real transactions?

Mr. Nolan: Same objection.

Examiner Manghum: He has not answered that.

Mr. Nolan: Exception.

Defendant's Exhibit C.

A. Well, a sheet is issued after the transactions are done, so you cannot use the sheet for transaction. It is merely a reference.

Q. You have copies here of this "Bulletin de Correspondence" that we have been speaking about? A. Yes.

Q. Have you one for April, 7, 1919? A. April 8th, I have one.

Mr. Nolan: Where on this does April 8th appear?

Mr. Holmes: Column 14.

Q. Will you produce that "Bulletin de Correspondence" of April 8, 1919? A. Yes.

Mr. Holmes: I offer that in evidence.

Mr. Nolan: That is objected to as irrelevant and immaterial, and not a proper basis to determine the rate of French francs on any of the dates involved in the complaint, and not being the best evidence of what the rate of francs was.

Mr. Holmes: Mr. Examiner, I might state a word here. I do not know that it will help you any, but it seems to me that it is almost true that the rate of exchange through this period is almost a matter of judicial notice. Everybody knows that the rate of exchange in French and English money was going down, from just a period after the war, and there is nobody that knows anything about business that does not know that. It is admitted in the answer that the rate of exchange varied. Let

544 *Defendant's Exhibit C.*

me continue on the idea of the judicial notice. I have not prepared any argument on the notion of judicial notice, because I did not suppose there would be any question raised about the rate of exchange, because there are different ways of proving it, perhaps, and I thought I was proving it in the best way. Whatever was the best way, would, I supposed, be the easiset way to find it, and I thought I had found
545 it, and I thought it was merely a matter of bringing something to the attention of the Examiner or the Commission, to verify the fact they knew already in a general way, on the same principle as judicial notice. Furthermore, we are not before a jury in a trial for a man's life, where everything has got to be kept carefully from the jury that might mislead them. While I do not argue for a minute that hearsay evidence should at all be accepted by this Court, as it is in a Court of Ad-
546 miralty, I want to urge upon you that this is not a jury trial in which all of the utmost technicalities are to be used. Now, Mr. Lucas and I did about everything, except send to France, to produce the best evidence and it seems to me that this is some evidence; maybe it is hearsay, but I can find plenty of cases that hearsay evidence and newspaper reports—plenty of cases to hold that they are admissible on a question like this. I did not look them up, because I did not think it would be

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necessary, but I ran across a lot of them in another matter recently, and it seems to me that any evidence at all on the rate of exchange, either here in New York or in France, is something which puts the other side on their proof to show something better.

By Examiner Manghum:

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Q. Do these papers contain the general market quotations? A. Yes.

Q. In France? A. They contain foreign exchange rates, and then they contain the cotton futures in Havre, and they contain the cotton futures in the movement of cotton, and they contain the New York market and the New Orleans market, and then they contain statistical information—general information; then they contain the coffee market.

Q. Do you know whether or not the trade generally uses those figures? A. In Havre, yes. This is the standard paper they use, because it contains the entire information in a very convenient form.

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Examiner Manghum: These papers will be received, and the Board will determine the weight to be given to them.

Mr. Nolan: May I have an exception to that?

Examiner Manghum: Yes; exception allowed.

(The papers were received in evidence

550 *Defendant's Exhibit C.*

and marked Wagner Exhibit 3. (See book of exhibits.)

Mr. Holmes: I do not know whether it is too late to ask for this, but may I ask for a subpoena, addressed to the custom house or the Collector of the Port, to produce here all of his Consular Invoices which contain the certificates of rates of exchange for certain periods? Perhaps they will be produced when the Collector
551 produces these other papers we have subpoenaed. I trust they will, but if they are not, I would like to make an application now that he produce those.

Examiner Manghum: I will say this for your benefit, Mr. Holmes. It is the practice in these reparation cases, where there are many shipments involved, not to go into the details of the transactions until after the Board has determined whether or not the complainant is entitled to reparation. Now, it seems to me that you are putting
552 the cart before the horse here. We might spend days taking the details of these shipments and exchange rates, and then the Board might determine that you are not entitled to reparation. That is the question that is to be determined from the facts produced here today, and then you can comply with Rule 21 of the Rules of Practice, and prepare your statement upon which the Board would award reparation, and determine the amount, if you are entitled to it.

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Mr. Holmes: Do I understand that I am not bound to prove all of these details of my case on which the amount should be arrived at, at this hearing?

Examiner Manghum: You should prove enough to entitle you to reparation, if you feel that you are entitled to it, now, but you should not go into each specific shipment, each specific rate of exchange and each specific date.

Mr. Holmes: I did not understand that.

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Examiner Manghum: We could sit here indefinitely and go into those matters, and then they might determine you were not entitled to any reparation at all.

Mr. Holmes: I thought I had to prove my whole case.

Mr. Nolan: Then, as I understand, Mr. Examiner, the thing to prove now is the principle involved and that they have been damaged, and whether they are entitled to reparation, and the computation for any damages can be raised afterwards?

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Examiner Manghum: That is right.

Mr. Lucas: That raises the question of the compentency of the evidence that will be produced in compliance with Rule 21, as to the proper rate of exchange.

Examiner Manghum: That is a matter that can be gone into after it is determined whether or not you are entitled to reparation.

Mr. Lucas: We still have permission to bring that feature up?

Examiner Manghum: Oh, yes.

556 *Defendant's Exhibit C.*

Mr. Holmes: Let me ask this witness one more question.

Examiner Manghum: You can prove a few shipments. That is customary, and it is necessary.

Mr. Holmes: Well, I thought the case as to unproved shipments would fall if we did not prove every shipment.

Examiner Manghum: You can see the time it is going to consume to prove each
557 one of the shipments here, and then the fact that it may be absolutely necessary in the end.

By Mr. Holmes:

Q. Mr. Wagner, during this period of April, 1919, to January, 1921, can you remember whether French francs in New York were at a premium or a discount? A. Yes.

Q. Which were they? A. They were at a discount.

558 Q. Now, Mr. Wagner, in the course of your business, you know enough about the rate of exchange in American money in France, to positively know what the rate was in France, as to whether it was at a premium or a discount during the time I have mentioned, of your own knowledge? A. I did not get that question.

Q. I did not make it quite clear. During this period that I have spoken of, April, 1919, to January, 1921, during that time, did you have sufficient knowledge of conditions in France, as to the rate of exchange between American money and French money, to know of your own knowl-

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edge whether at that time, in France, the franc was at a discount, as compared with American money, or whether it was at a premium in comparison with American money? A. Yes.

Q. Was the franc at a discount compared with American money, or at a premium compared with American money, in France, during that time? I am confusing you, but it is important, I think. Was the franc at a discount or at a premium, in comparison with the dollar? A. Francs were at a discount.

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Mr. Holmes: Shall I put in these things —offer them in evidence?

Examiner Manghum: Let us take a recess for ten or fifteen minutes.

(A recess was taken for ten minutes.)

Mr. Holmes: I offer in evidence a number of copies of this "Bulletin de Correspondence," produced here by Mr. Wagner, and ask that they be marked in evidence.

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Examiner Manghum: They will be received under the exception of counsel for the respondents.

(The bulletins referred to were heretofore marked Wagner's Exhibit 3.)

Mr. Nolan: Now, Mr. Examiner, in view of the suggestion that we can waive these details of proving the damages until a later time, I think it is hardly necessary

562 *Defendant's Exhibit C.*

for me to cross examine Mr. Wagner today. It may be that I won't want to cross examine him, and I would suggest that the examination of Mr. Wagner be suspended and he permitted to go, and that we can call him back for cross examination, if it is found necessary to proceed with that element of the case.

Examiner Manghum: I think there has been a little misunderstanding on the part
563 of both sides as to just what the procedure was. I might say that the procedure in these reparation cases is about this: Without telling complainant exactly what he has to prove, if he establishes the facts with regard to a few shipments, then the question of whether or not he is entitled to reparation is passed upon. If he does not, that is the end of it. If he does, then under Rule 21, the respondent and the complainant get together and prepare a statement showing the amount of
564 the reparation. If they cannot get together, then the Board will hold a supplementary hearing to determine the amount they are entitled to. Now, I assume that Mr. Holmes will be prepared to follow that procedure.

Mr. Holmes: Yes, sir; I will be prepared. Now, if the Collector of Customs had been here in answer to the subpoena, I would have been prepared to show it all, but, as it is not the practice, and we will have an opportunity later, in case an award for reparation is given, to prove

these details, why, I assume we need not go on proving every detail of every bill of lading. 565

Examiner Manghum: No. About the cross examination of the witness, though, it seems to me that, of course, it is your privilege to cross examine him. He may or may not be here on supplemental hearings.

Mr. Holmes: Of course, I might say this, that the witness came at my request and not in obedience to a subpoena, and it is more or less of a hardship, perhaps, to him; if he is willing to come again, why, as far as I am concerned, I am quite willing to postpone the cross examination. 566

Mr. Nolan: I am perfectly willing to cross examine. I only suggest that to save time, if Mr. Holmes was ready with other witnesses, I was perfectly willing to waive the cross examination, merely in the interest of saving time; no other reason for it. 567

Examiner Manghum: Are you willing to waive cross examination on the assurance of Mr. Holmes that in the event of a supplemental hearing he will produce this witness?

Mr. Holmes: I will ask him to come. I cannot produce him, because he is not here under subpoena. I cannot undertake to produce him.

Mr. Nolan: Mr. Wagner will come, if I ask him, I presume, won't you?

The Witness: I will come if I am in

568 *Defendant's Exhibit C.*

New York. I am going abroad in April or the 1st of May.

Mr. Nolan: I take it, Mr. Examiner, that today will not finish this case, because, as I have already given notice, I cannot put in the defense of the respondent without the Commission to take testimony at both Havre and Bordeaux. I have served written notice to that effect, a notice that I would ask the Board to issue that Commission; so I take it that today is not going to wind this up, because my case could not possibly go in without the testimony of these witnesses in Havre and Bordeaux. For that reason, the cross examination of the witness today would be immaterial. It would save time—I could get rid of him in a few minutes, and perhaps it would be just as well if I disposed of him right now.

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Examiner Manghum: Under our rules, we provide that any such deposition in foreign countries must be taken before the hearing.

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Mr. Nolan: The rule, as I understand it, and as I gave it, is that ten days before the hearing notice must be given of intention to apply for such a commission. I gave such a notice ten days before the first date for which the hearings have been set.

Examiner Manghum: No, I think the rule provides it must be returned ten days before the hearing.

Mr. Nolan: It would have been impos-

sible to have such a commission executed within any such ten days before.

Examiner Manghum: Rule 15.

Mr. Nolan (Reading): "Any party desiring to take a deposition as herein provided, shall notify the Board as to the time and place of the proposed hearing, the name and post office address of the party and the name and post office address of the proposed witness," etc.

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Examiner Manghum: The paragraph I have in mind, the third from the last: "No deposition shall be taken in any proceeding unless such deposition may be delivered to the Board at Washington at least ten days prior to the date on which the case is set for hearing."

Mr. Nolan: It would be impossible, under the circumstances, physically impossible to comply with that, and for that reason I gave notice, requesting that the commission be issued. It says, "Any such deposition may be taken in a foreign country before any officer or person indicated by the Board or agreed upon."

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Examiner Manghum: You mean you are not prepared to go ahead with the defense?

Mr. Nolan: Not with the complete defense. It would be physically impossible. The rule I had in mind is this: "No deposition shall be taken, except after six days' notice to opposing party, and no deposition shall be taken in a foreign country, except after such notice as in each case shall have been determined by the Board."

574 *Defendant's Exhibit C.*

I sent a request to the Board for that commission, notice that I would apply for it, and the Board has not yet issued any order on that. I have written to France and prepared the way, so that the depositions could be returned speedily. That, of course, would all be obviated, if counsel for the complainant would see fit to stipulate that those printed publications, annexed to the answer, advertising the rate,
575 were duly published in France.

Mr. Holmes: Could we take this off the record?

Mr. Nolan: If he refuses to admit that, why, then it is necessary to take depositions to show that they were published in France and circulated and posted in the proper places, in accordance with the laws of France, and notices given to the shippers concerning them.

Examiner Manghum: Those photostat tariffs you have reference to?

576 Mr. Nolan: Yes, sir.

Examiner Manghum: What have you to say about that?

Mr. Lucas: We cannot stipulate that.

Mr. Holmes: No; of course, in the first place, we do not know, and if we stipulated that they were published in France, I am afraid we would commit ourselves to something that is like constructive notice, possibly something of that sort.

Mr. Nolan: I took this up with counsel some time ago, when he said he could not

stipulate, and I then gave the notice that I would apply for this commission. (Indicating): Those are the originals of which the others are photostatic copies.

Examiner Manghum: You do not want to cross examine this witness?

Mr. Nolan: I will cross examine him now, and dispose of him, so he will be through.

Examiner Manghum: Let the record show that that is the conclusion of the direct testimony? 578

Mr. Holmes: Yes.

Examiner Manghum: Cross Examination.

Cross Examination by Mr. Nolan:

Q. How long, Mr. Wagner, have you been with the Guaranty Trust Company? A. Six years—five years and seven months.

Q. Always in the New York office? A. Yes.

Q. Did you travel for them from the New York office? A. No. 579

Q. During the five years you have not traveled at all? A. No.

Q. Then when you saw the "Bulletin de Correspondence" in three offices in Havre, it was not during the period involved in this suit, from April, 1919, on, was it? A. No.

Mr. Holmes: Well, I object to that.

Mr. Nolan: It is very important, I think.

Examiner Manghum: That is important. Objection overruled.

Mr. Holmes: Exception.

580 *Defendant's Exhibit C.*

Q. How many foreign exchange brokers were there in New York City, during the period following April, 1919, who were in the business of buying and selling French exchange? A. Well, at that time maybe ten or fifteen responsible brokers. Of course, there were a few more smaller brokers that don't count.

Q. There would be at least fifteen responsible brokers, would there not? A. About fifteen, yes.

Q. And then quite a number of what you call
581 irresponsible brokers? A. Yes.

Q. And the rates of exchange that were in effect from day to day were published in the daily newspapers here? A. Well, I should say yes, with some reservations.

Q. Well, give us the reservations? A. The newspapers have a peculiar way of getting their rates in New York. Certain papers call up, say, at two o'clock; others call up at three o'clock; others call up at four o'clock, and they get a list of rates from two or three different places, and then they strike the average. Now, the rates pub-
582 lished by the newspapers will never agree in New York, because one paper will have a set of rates based on two o'clock rates, another one on half past two and so on, and the rates change every few minutes.

Q. Yes, the newspapers take it from time to time, according to when they go to press? A. Yes.

Q. And the rates which you took from the three brokers with whom you did the buying and selling of exchange during the day, and then you took the average of those dealings— A. And our own dealings.

Defendant's Exhibit C.

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Q. And your own? That is, you took the average of what you bought and sold during the day yourselves? A. No, that is not exactly it. At the close of the day, say around four o'clock, we have our own market. We are willing to pay a certain rate, and we are willing to sell at a certain rate, then, at some time, say about four o'clock, we call up the brokers, which are the principal brokers in French exchange or other exchanges, too, and we get their market, their bid and ask prices. We have those four or five sets of rates 584
that we strike the average.

Q. You would ask them what was their selling price or their asking price during the day, which? A. At the close.

Q. And so when you ask them, which do you ask them for, their buying price or the price at which they sold? A. We get both rates.

Q. And those vary with the different houses that you call up? A. In a small fraction, yes.

Q. You, yourselves, do you buy direct, or do you buy through these other brokers you call up? A. We bought direct and through brokers. 585

Q. When you bought direct, how did you buy, by cable or did you buy here in New York? A. We buy from commercial houses and we buy abroad.

Q. Your different customers would come in with drafts, drawn on French banks, and you would buy those drafts from your customers, is that what you mean? A. They would call up and say we have so much exchange; what can you pay?

Q. When you arrive at the average rate of the

586 *Defendant's Exhibit C.*

day of the transactions in your own bank, just what figures do you use to get the average rate? Do you use the buying figures at which you bought or do you use the selling figures at which you sold? A. Both.

Q. You take both the buying and selling, add them together, and that gives you the rate of French francs? A. Yes.

Q. And you get the same sets of figures from three other brokerage houses? A. Yes.

587 Q. Do you consult any of the other banks in New York? A. No, it is not the custom.

Q. Quite a few of the other banks also bought and sold exchange, as your bank did? A. Yes.

Q. But you did not take them into consideration in arriving at the average? A. No.

Q. Was there a different rate for cable or for drafts bought by an American—say to buy a draft, payable in French francs, in France, was the rate different for that than there was for the actual cash money that passed hands? A. You mean actual transfers or actual currency?

588 Q. Was there a different rate for drafts than there was for currency? A. Yes.

Q. In making up your average, did you make up your average on the buying and selling of currency, or on the buying and selling of drafts? A. The average is made up on currency, not on drafts: made up of cable transfers.

Q. Then it was on the cable transfers and not what the cash brought here in New York? A. No, different rates.

Q. Do you know about what the charge was for cabling money to France in those days? A. Just what do you mean, the charge?

Defendant's Exhibit C.

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Q. For instance, if I wanted to cable ten thousand francs to France, from New York, what would the charge be for cabling that? A. We would quote you the actual market rate, and in addition to that you would have to pay for the cost of the actual cable.

Q. That was about what, do you know, per hundred dollars? A. Maybe between $2.50 and $4.

Q. Did you consult any publications at all in arriving at your figures for the average of the day, or did you just base it entirely on these telephone communications? A. Entirely on telephone communications the figures published come from us following that.

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Re-direct Examination by Mr. Holmes:

Q. Those figures of yours, are they the closing transactions of the day or the average for the day? A. They are the closing transactions, not the average.

Mr. Holmes: That is all.

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Re-cross Examination by Mr. Nolan:

Q. You mean you gave the rate of francs for a day as the last transaction which occurred in the day? A. Why, no; we don't keep a record of the average rates. We keep a record of the closing rates, which serves our purpose as reference and comparison.

Q. For instance, how would you get at the closing rate? A. Well, as I said, around four o'clock, or sometimes a little later, we have our

592 *Defendant's Exhibit C.*

own market, and then we call up the different brokers and get their market, and compare the rates and strike an average.

Q. You say "We have our market." Do you mean your market is the last transaction you execute in your bank that day, or the average of all you execute during the day? A. Our market is at any time—is the rates at which we will buy and sell French francs.

Q. You fix those rates arbitrarily yourselves?
593 A. Not arbitrarily; it depends, no.

Q. How do you fix them? A. Well, supposing that a commercial house will have a half million francs to sell today, we will call up a bank and ask for a rate. Now, the bank—it is impossible for the bank at the same moment to sell these francs, consequently the bank has to take a chance and make a bid at the rate at which the bank believes that it can sell, and supposing at a given moment a firm like the French Line will require, say, a hundred thousand francs. They will call up and ask for a rate. Now, it is prac-
594 tically impossible at the same moment for us to buy these francs, and we, consequently have to quote a rate at which we believe we can cover ourselves within a few minutes or within a short while, without loss. Now, these two rates, at a given moment, we know such and such a broker has something to sell, such and such a broker has something to buy, and we know about at what rates we can buy and sell; consequently, if the French Line or a commercial house will call us up and ask us for the market, we will tell them we will pay so much, and we will sell at so much,

and that is our market. That is our bid and ask price.

Q. That market varies during the day, does it not? A. Continuously, yes.

Q. Might vary every minute? A. Yes.

Q. How do you regulate that? A. Not every minute.

Q. Every half hour. How do you regulate that, so as to have a market? A. We keep in constant touch with the brokers.

Q. All right. Now, we have got that. Your 596
market varies up and down all day? A. Yes.

Q. At the end of the day you fixed a rate for what you call your market. On what did you fix that rate? A. On the rates prevailing at that time, say at four o'clock.

Q. And how did you know? Was it something that you fixed that prevailed at four o'clock? How did you know what to fix at four o'clock for your own market? A. We are kept posted by the brokers.

Q. Then it was what the other fellow was willing to pay was what you considered your 597
market? A. No, it is not. We base our market on what the other fellows are prepared to do, on what we believe they are prepared to do. Supposing, at five minutes to four a broker calls up and says: "I have francs to sell." We tell him, "Sorry we can't use them;" and a few minutes later we are asked to sell francs to somebody else. I do not know if I can still get those francs, but I believe I can, but yet I am willing to take a chance for a few minutes.

Q. Then the market about which you have testified was something that was a matter of ad-

598 *Defendant's Exhibit C.*

justment on the moment, depending on whether or not you could make a profit for the bank on it; is that true? A. No, it is an actual market, because at those rates we are prepared to buy and sell at that time.

Mr. Nolan: That is all. Now, Mr. Examiner, I move to strike out this witness' testimony as to the market rate of francs on the dates involved in the complaint, upon the ground that he has not been qual-
599 ified as an expert, and upon the ground that the sources from which he has assumed to have testified to the market rates, were limited sources. It was not a general source; it was not well-founded and was not the regular market.

Mr. Holmes: Mr. Examiner, he testified from his own recollection, without objection, that the rates of exchange of French francs was at a discount both in New York and in France, which is all we are really concerned in here. As I understand it from
600 the ruling that you have just recently made, and as to the detail of the rates of exchange, I assume that we need not go into it very deeply at present, because we are only concerned, as a matter of reparation, with the facts which he testified to of his own knowledge, and he has amply shown, even on cross examination, his thorough familiarity with the exchange and his knowledge of the time that he knows that French francs were at a discount in New York, and knows that French

francs were at a discount in France, and that is the one thing, as I understand it, that the Commission has to consider, and not the detail. 601

Examiner Manghum: Objection overruled.

Mr. Nolan: Exception.

Examiner Manghum: Exception noted.

Mr. Nolan: Then I move to strike out the testimony of this witness concerning the market price of francs and dollars in France, particularly all testimony of his based upon the document or publication known as the "Bulletin de Correspondence," upon the ground that it has not been shown that during the period involved in the suit, the witness has any knowledge as to whether or not that publication was in circulation and in general use, and upon the ground that it has not been shown, either by the witness or by any other testimony, that the Bulletin was a proper source from which such figures could be obtained. 602 603

Mr. Holmes: Mr. Examiner, he testified it was in use in the Havre office of the Guaranty Trust Company during this time, and that at some time he had seen it in several places. Now, of course, perhaps it is not quite as convincing, as if he had seen it during this time, but if the paper had a certain reputation among certain people at this time, I think we may readily assume that that reputation continued. If

four people used it at a certain time, until it is shown that the paper is discredited, I think that the evidence that they used it at a certain time, is some evidence that they continued to use it and had the same amount of dependence upon it.

Examiner Manghum: The evidence will be received, and the Board will determine whether or not it is sufficiently admissible for the purpose of the case.

Mr. Nolan: Exception, please.

Mr. Holmes: May I put a witness on, in what you might call out of the logical and consecutive order?

Examiner Manghum: Yes.

Mr. Holmes: I do not know that this testimony is absolutely necessary. What I mean to say is this, Mr. Examiner, that I will try to prove by this witness that the cigarette paper in question was actually competitive—the cigarette paper imported by others was actually competitive with the cigarette paper imported by us. Perhaps it would be sufficient to simply show it was cigarette paper in boxes and cigarette paper in rolls, but I desire to offer evidence that the cigarette paper imported by us, and cigarette paper imported by other consignees, the two were in competition with each other.

Defendant's Exhibit C. 607

JOHN E. WILLIAMSON, a witness called on behalf of the complainant, being duly sworn, testified as follows:

Direct Examination by Mr. Holmes:

Q. Mr. Williamson, what is your occupation? A. General supervision of all cigarettes manufactured by the American Tobacco Company.

Q. How long have you had that position? A. About 12 years, I should say.

Q. Before that, what did you do? A. I was in 608
the factory, manufacturing cigarettes and tobacco.

Q. How long have you worked for the American Tobacco Company? A. About 21 years.

Q. Have you always been concerned with cigarette manufacturing since you have been working for the company? A. Not for the first three or four years.

Q. What did you do then? A. Manufactured smoking tobacco.

Q. Do you have supervision of more than one factory? A. Yes. 609

Q. How many? A. Six.

Q. Do I understand you to say you have charge of the cigarette manufacturing exclusively, as far as the manufacture is concerned? A. Yes.

Q. What brands of cigarettes are made by the factories under your supervision? A. Lucky Strike; Pall Mall; Helmar; Egyptian Straights; Lord Salisbury; Sweet Caporal; Mecca; Hassan.

Q. Do you make 111? A. And 111; several other similar brands.

Q. Which of these are high grade brands? A. The Pall Mall, Egyptian Straights; Helmar, Lord

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Salisbury—the ones we consider the higher grades.

Q. Is Pall Mall an all-Turkish brand? A. It is.

Q. Is Egyptian Straights an all-Turkish brand? A. It is.

Q. What are the lower grade brands among those you have mentioned? A. Sweet Caporal, Hassan, Mecca.

Q. And then the medium grades, I suppose? A. To the lower grade we would add 111.

611 Q. And the medium grades, or don't you make that division exactly? A. We don't make the division.

Q. What do these low grades, like Hassan, Mecca and Sweet Caporal, sell for? A. They have been selling 20 for 20.

Q. 20 for 20 cents? A. Yes, sir, retail price was 20 for 20 cents.

Q. That applies to Hassan? A. Hassan, Mecca.

Q. And Sweet Caporal? A. Sweet Caporal, Lucky Strike.

612 Q. And Egyptian Straights are somewhat higher and a more expensive cigarette, are they not? A. Yes.

Q. What have they been selling for, 10 for 15? A. I think it is about 15 cents for 10.

Q. You are giving the retail price? A. Yes, retail price.

Q. What is the retail price of Pall Mall? A. 25 cents for 10.

Q. Taking all of these cigarette brands that you have mentioned, do they or do they not include every grade and class of cigarettes on the market? A. Yes, I would say they do.

Q. Is it true that these brands—either one or

the other of these brands—is in competition with all the other brands?

Mr. Nolan: Just a moment. I object to that as calling for a conclusion.

Examiner Manghum: Objection overruled.

Mr. Nolan: Exception.

Mr. Holmes: I will withdraw the last question.

Q. Is it necessary for you, Mr. Williamson, in order to be faithful to your employment and do your work competently, to be familiar with all other cigarettes manufactured, that enter into competition with cigarettes made by you? A. Yes. 614

Q. Are the cigarettes made by you in active competition with other brands? A. Yes.

Q. That is true of all the cigarettes you have mentioned, is it not? A. Yes.

Q. Do these cigarettes that you have mentioned enter into competition with all other cigarettes made in the United States? A. All of the popular brands. 615

Q. You make it a point to put out cigarettes and compete with every brand on the market, that has any considerable sale? A. Yes.

Q. You put out new brands from time to time, is that true? A. That is true.

Q. If a brand is put out that is of a class that is different from what you are putting out at the time, you get up a cigarette that meets the competition of that brand? A. Well, if the brand amounts to anything, we would.

Q. So it is true, then, is it, in that way, that

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the brands put out by you enter into competition with every brand of any importance that is sold in the United States? A. Yes.

Q. Are you familiar with the character of the cigarette paper which is used in making the products of your competitors? A. Yes.

Q. Do you smoke the cigarettes of your competitors? A. I do.

Q. Do you consider the burning quality of their paper and all of the characteristics? A. Yes.

617 Q. You know the quality of the paper, then, as well as the quality of the tobacco of your competitors, by actual experience in smoking the cigarettes, is that true? A. I know the quality, yes.

Q. Now, Mr. Williamson, in making cigarettes, do you use the same type of paper for a low grade cigarette and a high grade cigarette? A. Yes, the same type of paper.

Q. For instance, Egyptian Straights you have mentioned as a high grade cigarette, and Hassan you have mentioned as a low grade cigarette?

618 A. Yes.

Q. Is there any difference in the paper that goes into those two cigarettes. A. No; use the same paper.

Q. I have used those two brands as an example, but that would be true of any high grade or low grade that I might use as an example of your manufacture? A. All of our brands, except Pall Mall. We are a little more critical with the paper —might select better reels, or look for flaws in it of some kind.

Q. But it is the same paper? A. Same paper, yes.

619

Q. You mean you would be a little more careful, in picking out, as far as Egyptian Straights are concerned? A. No, we would use the paper as it comes.

Q. In your experience in smoking cigarettes of other manufacturers and making a study of their methods and materials, what do you know of the grade of paper that they use on their different brands of high grades and low grades? A. They use practically the same papers on all of the grades.

620

Q. Then, it is true, is it not, from what you have already said, and follows from what you have said, that all of the cigarette paper used by the American Tobacco Company in making cigarettes, is made up into a cigarette that enters into competition with some cigarettes of other manufacturers? A. Yes.

Q. Are these answers true with regard to the period from 1919, 1920, 1921? A. Yes.

Q. Is cigarette paper used for anything outside of making cigarettes? A. Making cigarette books; cut papers, to roll your own.

621

Q. In 1919 and 1920 and January, 1921, did the American Tobacco Company make any books out of imported paper? A. Yes.

Q. For sale? A. For sale, yes.

Q. Did you make any out of imported paper to give away? A. No.

Q. Then where the American Tobacco Company imported cigarette paper—exclusive cigarette paper in books—it either manufactured that paper in cigarettes, or made it into books for sale? A. Yes.

Q. This refers to the period I have mentioned,

622 *Defendant's Exhibit C.*

1919, 1920 and January, 1921, is that right? A. That is right.

Q. Have you anything to do in the American Tobacco Company's organization besides making cigarettes, with reference to paper? A. Yes; I pass on all supplies that are used in making cigarettes, including paper, and all kinds of wrapping material.

Q. Do you have anything to do with cigarette paper that is not used for making cigarettes?
623 A. I pass on the paper that we make books out of.

Q. What do you mean, "Pass on it"? A. Examine the paper to see if it is up to standard.

Q. And if you pass it, it is made up into books? A. Yes.

Q. And if you do not pass it, it is not? A. Yes.

Q. Who else does this besides yourself? A. Well, our Chemical Department.

Q. All under your supervision? A. Yes.

Q. Are you familiar with all the cigarettes and books—that is, the little packets of cigarette
624 papers that are sold throughout the United States? A. Partly familiar with them.

Q. Those that sell generally? A. Yes, I know the brands that sell.

Q. Are you familiar with all of those that have any considerable sale? A. Yes.

Q. This applies to the cigarette books of your competitors, as well as the American Tobacco Company's books, does it not? A. Yes.

Q. Are there many grades or types of these books? A. No, not a great many of the imported books.

Q. Well, not a great many. Is there much dif-

625

ference in the grade of paper in the imported books, of any manufacturer or any importer? A. Not a great deal.

Q. Is there enough that one would sell and not be in competition with the other imported books? A. I don't think so, no.

Q. Would they all be in competition? A. Yes.

Q. Is it true that if one book was not quite as good as another, it would still be in competition, although it might sell for a lower price? A. Yes.

Q. As a smoker of cigarettes, and as I might say, as a professional smoker of cigarettes, can you say that any cigarette paper that is imported, is acceptable to a smoker if he cannot get his favorite brand? A. Yes, I would say so.

626

Q. What books—when I say "books", I mean what we ordinarily speak of as cigarette books—that is, little packages of cigarette papers, out of which cigarettes are rolled—what books did you make in this country for sale, in 1919, 1920 and 1921? A. Vanity Fair, Persian.

Q. Did you make these books in the United States? A. Yes.

627

Q. Out of imported paper? A. Yes.

Q. Do I understand correctly that all of the imported paper that the American Tobacco Company got in 1919 or 1920, or January, 1921, was either made into cigarette books of the brands you have just mentioned, or else used to make cigarettes? A. Yes.

Q. Who are your principal competitors—that is, the principal competitors of your employer, the American Tobacco Company? A. Liggett & Meyers Company, Pierre Lorillard Company; Tobacco Products.

628 *Defendant's Exhibit C.*

Q. R. J. Reynolds? A. R. J. Reynolds; those are the principal competitors.

Q. Is cigarette paper sold by others than the manufacturers—that is, cigarette paper in books—I mean it is sold on the market? A. Yes.

Q. By importers? A. Yes.

Q. Just the same way as the manufacturer sells it, I mean, to jobbers or to retailers? A. Yes.

Q. Imported papers? A. Yes.

629 Q. Who are some of these importers, that are not tobacco manufacturers, if you can think of any of them? A. I can only think of just one now, Strauss—H. Strauss is an importer of cigarette paper. There are quite a few, but I can not recall them just now.

Q. What cigarette books does the American Tobacco Company sell, very largely? A. Riz La Croix.

Q. Is that a large seller in this country? A. Yes, I think it is one of the largest sellers.

Q. Do Liggett & Meyers have an imported book
630 that is in competition with that? A. Yes, they have a book.

Q. From what you have testified before, their book of imported paper is in competition is in competition with that, is it not?

Mr. Nolan: Irrespective of price, he says.

A. Yes.

Q. Where do you get this Riz La Croix? A. France.

Defendant's Exhibit C.

631

Q. Is it made by a concern called L. La Croix Fils? A. I think that is the name.

Q. But you know it is a concern in France? A. Yes.

Mr. Holmes: That is all.

Examiner Manghum: Cross examination.

Cross Examination by Mr. Nolan:

Q. That last firm, the La Croix firm, the American Tobacco Company is a stockholder in that company, if it does not control it, is it not? A. Not to my knowledge.

632

Q. Can you make any statement as to that, right now?

Mr. Holmes: Yes; I can. It does not own it or control it, or have anything—any stock control or financial interest in it, as far as I know, and I am sure I would know if it did. We have a contract that has been running for a number of years, and it is still in effect with that concern.

633

Q. You know that you have been buying from this same concern for some years prior to 1919, do you not—the La Croix? A. Yes.

Q. You do not know anything about the terms under which your company buys from them? A. No, I do not.

Q. That would not be your department? A. No.

Q. What other concern in France does your company buy from? A. I forget the name of the firm, now.

634 *Defendant's Exhibit C.*

Mr. Holmes: De Mauduite.
The Witness: Yes.

Q. Also buys from Charles Pfeiffer? A. Yes, we have during this period.

Q. Did you buy from Pfeiffer prior to April 7, 1919, do you know? A. I think we did.

Q. And from De Mauduite, also? A. Yes.

Q. You have been doing business with these people quite a few years? A. Yes.

Q. Doing so much business with them that you
635 are familiar with their names and know you have done this business continuously with them? A. Yes.

Q. Have you bought from anybody else in France that you know of, but these three? A. Not in later years.

Q. Not since several years prior to April 7, 1919? A. I could not say just how long ago. We have bought from Bronstein.

Q. That was some years ago? A. Yes.

Q. Of course, all of this paper goes through your hands, so you would know where it is
636 bought? A. The paper don't always tell you where it is bought.

Q. You know it comes from these particular houses? A. Yes.

Q. How many different kinds of books did you say you manufactured and put on the market? A. Two, we manufacture.

Q. Vanity Fair and Rix? A. No, Vanity Fair and Paper Persian.

Q. What does the Vanity Fair book sell at retail? A. I think it is a 10 cent book.

Q. And the second one you mentioned? A. I think it is the same price.

637

Q. The same paper? A. Yes, practically the same, imported paper from France.

Q. I mean, is it of the same quality of paper in all respects? A. Yes, same quality.

Q. Made by the same people? A. To the best of my knowledge.

Q. That is true of all the cigarettes, too; they are all made of the one paper? A. Yes.

Q. And the only exception to that is that the Pall Mall, you carefully examine the paper for defects first, before you use it? A. Yes.

638

Q. Is the tobacco the same in all the cigarettes, also? A. No.

Q. What cigarette do Liggett & Meyers make that correspond to the old brand, Sweet Caporal? A. Well, say, Piedmont is the nearest to it.

Q. Sells at the same price for the same number? A. Same price.

Q. What one does Lorrillard make that corresponds to Sweet Caps? A. They haven't got any exactly corresponding to Sweet Caps. They have got the same priced cigarettes.

Q. Nothing that corresponds to it? A. No.

639

Q. What does Reynolds make that corresponds to Sweet Caps? A. Cigarettes called Reno.

Q. About the same kind of tobacco in that? A. Practically the same tobacco.

Mr. Nolan: That is all, Mr. Williamson.

Mr. Holmes: That is all, Mr. Williamson. Thank you very much.

Examiner Manghum: Suppose we take a recess and reconvene at half past two o'clock.

(Whereupon a recess was taken until two-thirty o'clock p. m.)

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After Recess.

2:30 p. m.

Mr. Holmes: Mr. Examiner, when I was under the impression it would be necessary to put in evidence to prove all of these facts, I had this subpoena served on the Custom House which you issued, and which I handed you a little while ago, with
641 proof of service, and I was called up by the process server at the time, and he asked me to send down there the numbers of the bills of lading, which I did, I think, two days later. The affidavit of service will show there was ample time, perhaps ten days or twelve days. Anyway, I promptly sent to the Law Division, as I was requested to do, all of these numbers. Mr. White says the Law Division just has stated to him that that list had never been received and they were awaiting the list.
642 We made various inquiries around the place, but no one remembers seeing the list. Of course, it would have been well nigh impossible to call me up at the American Tobacco Company, or call up anybody that had to do with it. The list was sent, but I do not know what the sending of the list has to do with it. I make this preliminary statement to say that not having those bills of lading from the Custom House, we have what I presume are duplicate originals, and as I understand, under

your recent ruling, it is quite incompetent for us at the present time to go ahead and prove every item anyhow.

Examiner Manghum: You are in position to show the facts with regard to some typical shipments?

Mr. Holmes: My proposal now is, in the absence of the representative of the Collector, who would produce all of these original bills of lading from the Custom House, in obedience to the subpoena that I will 644
put in a few of the duplicates that we have. Now, we have not all of the duplicates, and, as I understand, it is not necessary or competent to put all in anyhow.

Examiner Manghum: No.

Mr. Holmes: And if we put in a few to show a typical case, that is sufficient for the purpose of this hearing, and an opportunity, if necessary, will be given after a decision, to produce the evidence in detail. Am I correct?

Examiner Manghum: That is correct. 645

Mr. Nolan: Now, I won't object to them as copies, so that will relieve that situation. Use the copies just as well as the originals.

Mr. Holmes: I won't then put in all that I have, even of these copies, but only sufficient to show several cases.

Examiner Manghum: Have you a witness to go on the stand?

Mr. Holmes: Yes; there is another feature. I had subpoenaed a witness from the

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French Line whom I might ask to answer from his books questions as to the payments of all of these shipments of cigarette books and cigarette papers to other parties consignees.

Mr. Nolan: Well, I understood that it would not be at all necessary to produce a witness to prove such facts as that. We have no objection to giving you the list, which I think we showed you once before.

647 I think that is your list, is it not?

Mr. Holmes: That is the list.

Mr. Nolan: The man you subpoenaed would not know the first thing about it anyhow.

Mr. Holmes: Well, it is a subpoena *duces tecum* to produce the books. We had to serve it on somebody.

Mr. Nolan: If you want the books produced, we will do that, but I think we can give you a tabulated statement.

Mr. Holmes: Well, anything at all, as

648 long as we get all of the facts.

Examiner Manghum: Suppose you examine that statement there and see if that is not sufficient for the purpose.

Mr. Holmes: That is our own statement we compiled from the newspapers.

Mr. Lucas: What we want to show is what basis of charges were paid by them on similar shipments.

Mr. Holmes: We know from records published in commercial papers that on such and such a date, a vessel called the

 649

Niagara, sailed from Bordeaux, and carried a consignment of cigarette papers to S. Alexander. Now, I want to know whether that shipment was prepaid in France.

Examiner Manghum: Cannot you select some particular ones of those, probably Mr. Nolan—

Mr. Holmes: May I say this? It seems to me this is a little different feature of the case from what we have just been con- 650
sidering about the rates of exchange. I am afraid that this feature of it goes to the merits, and if we only selected a very few, a few might not be enough to prove discrimination. Perhaps the discrimination could not be proved by one, perhaps it could not be proved by twenty. Now, the discrimination has got to be there before we get an order for reparation, I suppose, and the discrimination has got to be shown by perhaps more than one instance so that it
seems to me that we ought to—perhaps, 651
we ought to show them all. What I would like to do would be to ask in regard to each of these what the fact was.

Mr. Nolan: Well, here is a statement which shows this they paid in dollars and this they paid in francs.

Examiner Manghum: That will answer the purpose, I should think.

Mr. Nolan: That seems to be the only copy which I have. The stenographer might take it and make copies of it. There

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are a number of them. I think I can point out to you names of the ships, dates and all. You see some of them are in dollars and some in francs. It shows where they are in francs and where they are in dollars.

Examiner Manghum: Cannot we stipulate that into the record?

Mr. Lucas: That is what I would like to have.

653 Mr. Holmes: May I have a moment to go over it a little bit, because it is quite important?

Examiner Manghum: Yes.

Mr. Holmes: Now, let us get it in the record, so it will mean something quite definite.

Mr. Nolan: I think that follows your stipulation.

Examiner Manghum: You stipulate it into the record, let Mr. Nolan make such remarks as he cares to.

654 Mr. Holmes: The following stipulation as to facts is made by counsel for the respondent, on behalf of the respondent, and counsel for complainant, on behalf of complainant. The following facts are admitted:

Mr. Nolan: Why not stipulate it this way and save a little time, and say the annexed statement, furnished by the French Line, is admitted as a record of all shipments of tobacco papers—cigarette papers, in bulk or however you want to describe

them, carried on ships of the French Line, and shows whether the same was paid in dollars or in francs. That is all that needs to be said about it.

Mr. Lucas: Say in dollars or in francs.

Mr. Nolan: And at New York or Bordeaux or Havre, as the case may be. That is what that shows.

Mr. Lucas: That is all right.

Mr. Holmes: There are several other things that I had to connect it up with here.

Examiner Manghum: Does that show the actual rate that was paid?

Mr. Holmes: That is the difficulty that is troubling me now.

Mr. Nolan: Yes, it does. It shows 60 francs or 80, as the case may be. Where dollars were charged, it shows dollars.

Mr. Holmes: Let me dictate a stipulation, and if there is any objection to it, then we can change it.

Examiner Manghum: I would like to get the direct stipulation on the record, and if you can agree as to what you are going to stipulate, you had better not leave it on the record until you get your agreement.

Mr. Holmes: All right. The following stipulation as to facts is made by counsel for the respondent, on behalf of the respondent, and by counsel for the complainant, on behalf of the complainant. The following facts are admitted:

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In Exhibit B, shipments were made by the vessels thereon indicated to consignees thereon indicated in column 2, of the quantity, to wit, cases indicated in Column 3; of the weight or measurement indicated in Column 4; at the rate per unit of measure or weight indicated in Column 5; for which payment was made at the rate in the amounts indicated in Column 6; in francs or dollars as the case may be, payable at the port indicated in Column 7; and paid at such port, the amount being indicated in dollars where the payment was in New York, and the amount being indicated in francs, where the payment was at the French port, to wit, either Bordeaux or Havre.

659

Mr. Nolan: I think it might be well to say the amounts being indicated by dollars were paid at the port of destination, New York, or in francs, when prepaid, at the port of departure, either Havre or Bordeaux, as the case may be.

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Mr. Holmes: That is on the record, and that will stand that way. Another thing, Mr. Nolan, we have a contract with Pfeiffer and a contract with L. La Croix Fils. I would like to have you admit, if you will—I will show you the original contracts—that there is a clause in these contracts which provides a payment in a certain way. I do not want to put these contracts in, if I can help it.

Mr. Nolan: I would like to have them

661

be marked as exhibits, and let the stenographer take them and make copies of them, so that we can have a copy for future reference. I think the terms of the contracts might be extremely important, as I suggested to you in a letter some time ago. Of course, I do not like the idea, without some reflection, of taking a section of the contract.

Mr. Holmes: That is quite all right. Let me suggest this: I have copies here of 662
both of these contracts. I have not compared them myself, but I presume they are correct, and we could have them compared. I would like to take the contracts back with me.

Mr. Nolan: Take the originals and leave the copies.

Mr. Holmes: Yes.

Mr. Nolan: I will take your word for it, if you say they are true copies. Mark the copies and keep the originals.

Mr. Holmes: One thing I desire to say 663
in regard to this contract, particularly the contract with La Croix that due to the extraordinary conditions, prices have been changed from time to time, so that the prices are not the same right now as they were when the contract was made.

Mr. Nolan: Why cannot we make a stipulation as to that, and save lugging up the record?

Examiner Manghum: Suppose you do this—

664 *Defendant's Exhibit C.*

Mr. Nolan: You know what is in them, and I will take your word for the essential parts of it. I know you will treat it fairly.

Examiner Manghum: Mr. Holmes, you and Mr. Nolan get together and submit any statement you want regarding the contracts, say within ten days from today.

Mr. Nolan: I was going to ask at the conclusion of this case, Mr. Examiner, if it would not be possible to adjourn the tak-
665 ing of testimony, say, for a week. I believe from information which I received over the telephone a few minutes ago, that there is one clerk, and possibly two, that we can get hold of here in the French Line who has been in the foreign office during this period, and I think I can call them. It might avoid issuing the commissions. I will prepare the commissions anyhow, and I can put in my entire case, then, at the next session. In the meantime, Mr. Holmes and I could agree upon this.
666 I think it would save time all the way through.

Mr. Holmes: There is a copy of the original French contract and translation, I don't regard it as very important anyway.

Examiner Manghum: I will say this, if we have any contract, we want the whole contract in the record. If you and Mr. Holmes are willing to agree that that is either the original or a true copy of it, that is the end of it; put it in the record.

Mr. Nolan: If you say you have got

copies, I will take your word, and never mind the originals, Mr. Holmes. I am satisfied.

Examiner Manghum: Have you copies for the record?

Mr. Holmes: Yes, sir, but in order to be entirely frank I desire to state that as far as the prices are concerned, which have nothing to do with this, we have taken them from time to time up and down. The parties are still bound by the 668
same contract, but we said in view of the present conditions it will be a temporary change. That applies to La Croix and not to Pfeiffer, which is not now in existence. Furthermore, this La Croix contract expired some time ago, but there was a provision for renewals, and I will state that it has been renewed and is still in effect. The Pfeiffer contract is in French and the La Croix contract is in English, and those contracts were made in the American Tobacco Company's office, and while I have 669
not actually compared them myself, I am sure they are correct. They will be available at any time for examination by counsel.

(The contracts are as follows):

"This Agreement, made and entered into this first day of February, 1912, by and between La Societe Anonyme D'Exploitation De Papetrie L. LaCroix Fils, a corporation having its offices in the City of Paris, France, party of the first part, and

670 *Defendant's Exhibit C.*

THE AMERICAN TOBACCO COMPANY, a Corporation organized and existing under and by virtue of the laws of the State of New Jersey, and having its principal office outside of said State, at 111 Fifth Avenue, city of New York, State of New York, party of the second part:

WITNESSETH:

671 That for and in consideration of the mutual covenants herein contained and the sum of One Dollar ($1.00) to each of the parties hereto by the other in hand paid, and divers other good and valuable considerations, the receipt of all which is hereby acknowledged, the parties hereto have covenanted, contracted and agreed, and they do hereby covenant, contract and agree, as follows:

672 *1st.* Beginning February 1st, 1912 and for the term of five years thereafter (subject to the right of party of the first part to cancel as hereinafter provided), party of the first part will sell to the party of the second part, and party of the second part will purchase from party of the first part, eighteen million (18,000,000) books of cigarette paper each year—the said eighteen million books to be of the following kinds and prices to wit:

"Riz Lacroix" 32 (125) 32
Rice about 125 leaves complete with covers Frs. .....31.00 per M.

Defendant's Exhibit C. 673

"Riz Lacroix" 32 (175) 32
Rice about 175 leaves complete with covers Frs. ....36.00 " "
"Riz Lacroix" 32 (225) 32
Rice about 225 leaves complete with covers Frs. ....41.00 " "
"Riz Lacroix" 32 (275) 32
Rice about 275 leaves com-
"plete with covers Frs. ....46.50 " "
"Riz Lacroix" 32 (175) 32
Rice about 175 leaves complete with Grand Format covers Frs. .....46.50 " " 674
"Lone Star" 100 (Rice Lone Star) 100 leaves about complete with covers .....22.50 " "
"Wheatstraw" 200 (200 leaves and covers) about .....38.00 " "

All of the above prices are to be for said books f. o. b. Steamer Bordeaux, France, and to be payable in Paris Exchange face value of invoice, on receipt by party of the second part of invoice and bill of lading. 675

2nd. In the event that the party of the second part requires during any year of said five years term a larger quantiy of books than herein contracted for any kind or kinds then said party of the first part agrees to deliver such additional quantity at the same prices as hereinbefore stipulated and subject to the same conditions. This additional quantity is to be delivered in such shipments as party of the second

676 *Defendant's Exhibit C.*

part may from time to time stipulate, it being the understanding of the parties hereto that the party of the second part must purchase at least 18,000,000 books during each year of said term of five years, and may purchase any additional number of books it may require at the prices hereinbefore set out, and that party of the first part will at said prices fill all orders of said party of the second part to
677 the extent of 5,000,000 books per month at least 12,000 of which may be Wheat-straw. The party of the second part undertakes not to purchase or sell any other books than those supplied by party of the first part excepting such books as mentioned by party of the first part in their letter of November 20th, 1907, during the continuance of this contract.

3rd. The party of the first part warrants and contracts with reference to said
678 books, so to be furnished said party of the second part, as follows: all said paper is to be strictly first class in every particular, and of the same quality, strength, finish, purity and texture, as that heretobefore put up and sold by said party of the first part in the United States of America; the books are to be neat and merchantable, and are to be known and marked by the well known trade marks and brands of said party of the first part now used by it.

Defendant's Exhibit C. 679

4th. The party of the first part covenants, contracts and agrees with the party of the second part that, during the continuance of said term of five years, it will not sell any cigarette paper of its manufacture in books in the United States; nor will it sell any of said books to any person, firm or Corporation located outside of the United States and destined to their knowledge, for the United States; the purpose of this clause being to create the 680
party of the second part the exclusive customer in and for the United States of the cigarette paper books manufactured by said party of the first part during the said term aforesaid.

5th. The cost of advertising of whatsoever kind done by the party of the second part shall be borne by the said party.

6th. The party of the second part agrees to protect the brands of the party of the 681
first part by all legal means in its power against all infringements or limitations of such brands, and that at its own cost.

7th. This contract is to be binding and of full force and effect for the period of five years next ensuing from and after February 1st, 1912, and shall continue thereafter from year to year at the option of said party of the second part with the right of said party of the first part to

682 *Defendant's Exhibit C.*

terminate same at the end of any year within which said party of the second part has ordered less than eighteen million of said cigarette books, but not for any other cause.

8th. This contract cancels any previous outstanding contract and shall inure to the benefit of the parties hereto and their respective successors and assigns.

683 In Witness Whereof said party of the first part has caused its corporate name to be hereto signed by its General Director Ans. Jules Durandeau thereunto duly authoried, and said party of the second part has caused this Instrument to be signed in its name by Percival S. Hill, Vice President, thereunto duly authorized.

All done in duplicate, the day and year first above mentioned.

684 Societe anonyme d'Exploitation des Papeteries

L. Lacroix Fils
(Signed) Durandeau,
Directeur Administrateur Delegue
The American Tobacco Company
by: (Signed) Percival S. Hill,
Vice-President.

Defendant's Exhibit C. 685

TRANSLATION.

BETWEEN:

1. Mr. Charles Pfeiffer, Manufacturer, of 48 Rue de Provence

PARTY OF THE FIRST PART,

2. The American Tobacco Company of 111 Fifth Avenue, New York, United States of America, represented by Mr. Harris, 686

PARTY OF THE SECOND PART.

3. The Company de Mauduit & Co. of Quimperle, Finistere "societe en commandite par parts" represented by Mr. Henri de Mauduit, acting as manager and associate,

PARTY OF THE THIRD PART,
Intervening.

687

WITNESSETH:

1. Mr. Charles Pfeiffer undertakes to deliver to the American Tobacco Company, who accept, one hundred fifty thousand (150,000) bobbins of cigarette paper verge egyptien, twenty grammes to the square metre, de Mauduit fabrication, (factory 143) at the price of forty francs the bobbin calculated on the basis of thirty millimetres on three thousand one hundred

688 *Defendant's Exhibit C.*

twenty metres, delivery F. o. b. Havre or Bordeaux according to the boat sailings.

2. Payments shall be made against presentation by Mr. Pfeiffer of the railway bills of lading and consular invoices to the Societe Centrale des Banques de Province, 41 Rue Cambon, Paris, or to any other bank designated by Mr. Pfeiffer.

689 3. Deliveries shall take place in approximate monthly quantities so as to be completed within a minimum period of seven months and a maximum period of twelve months.

4. Mr. Charles Pfeiffer declared and justifies that he has covered himself for the supply of bobbins forming the subject matter of the present contract by the firm of de Mauduit & Co., and he obliges himself to see that any future successors of
690 de Mauduit & Co., under any title whatever, shall carry out the manufacture in question.

5. The American Tobacco Company undertakes to cause this contract to be executed by any future successors and under whatever title, under pain of damages.

6. The parties, in case of legal process by reason of this present agreement, submit to the jurisdiction of the courts at Paris.

Defendant's Exhibit C. 691

7. Mr. Charles Pfeiffer gives by the present agreement an option to the American Tobacco Company for seventy five thousand (75,000) additional bobbins under the same terms and conditions as regards quality, price, deliveries, payments, etc., as for the hundred and fifty thousand bobbins sold by this agreement. The American Tobacco Company will have to give notice that it takes up the option, within a delay of sixty days from the signature of 692
the present agreement, and this by registered letter or by cable addressed to Mr. Charles Pfeiffer, 48 rue de Provence.

8. The de Mauduit C. intervenes in the present agreement in order to guarantee the quality of the goods sold and the dates of delivery and consequently it undertakes to have the deliveries made at the above mentioned dates and that the quality of the goods will be as indicated in this agreement. 693

9. This contract, by special agreement, shall not be registered, but if registration shall become necessary, any taxes, double taxes or fines incurred shall be exclusively paid by the party giving rise thereto.

10. In respect of this contract, the parties make the following election of domicile: The American Tobacco Company at the office of Mr. Archibald, 82 Boulevard

694 *Defendant's Exhibit C.*

Haussman, Mr. Charles Pfeiffer at 48 rue de Provence, Paris and the de Mauduit Co. at Quimperle, Finistere.

Made in three originals at Paris, the 15th September, 1918.

Lu et approve	Lu et approve
Chas. Pfeiffer	L. D. Mauduit

Lu et approve
Fred Harris.

695

Mr. Nolan: Would you mind making a statement on the record as to the present situation of your company with the de Mauduit?

Mr. Holmes: I do not mind telling what the fact is—I mean, to you, but I don't know whether I ought to do that, because—

Mr. Nolan: I can subpoena one of your officers.

696 Mr. Holmes: Then I can object to it. Perhaps Mr. Lucas can testify.

Mr. Lucas: As to the relation—

Mr. Holmes: You can testify that we own two-thirds of the stock, and I will object to it as immaterial, but not object to his competency to testify, because I assume what Mr. Nolan is driving at is, that if we control another corporation it might in some way be an agency, such that their knowledge was our knowledge.

Mr. Nolan: Whoever shipped these

goods was your agent because the French Line did not reach out in the air and grab these goods, you know, and put them on the ships, without instructions from your agent. 697

Examiner Manghum. Let us go ahead with the testimony here.

Mr. Holmes: Excuse me. I was just explaining why I did not want to seem to be ungracious about the admission.

698

George C. Lucas, a witness called on behalf of the complainant, being duly sworn, testified as follows:

Direct Examination by Mr. Holmes:

Q. Mr. Lucas, what is your occupation? A. Assistant Traffic Manager, American Tobacco Company. 699

Q. How long have you held that position? A. Four years.

Q. What did you do before that? A. Been connected with the rail line transportation for 20 years prior to that time.

Q. Are you familiar with traffic matters? A. That is my duty in connection with this position, to keep in touch with traffic matters the movement of our own goods and general traffic regulations.

Q. Interstate commerce matters? A. Yes, sir,

700 *Defendant's Exhibit C.*

I have to keep in touch with the rules and regulations of the Interstate Commerce Commission.

Q. Do you have anything to do with the proceedings before the Interstate Commerce Commission? A. I have to frequently file cases before the Commission and handle them to a conclusion.

Q. Do you try these cases yourself? A. Yes, sir.

Q. Mr. Lucas, was this Exhibit A—that is, the
701 amended Exhibit A—prepared under your supervision? A. Entirely so, under my supervision.

Q. Can you tell me what information or what sources of information were used in compiling it?

Mr. Nolan: I do not want to delay the proceedings, but I would like to object to that, Mr. Examiner. It seems immaterial; it is in evidence; it is admitted in evidence by consent.

Mr. Holmes: Yet I want to show this, that the rate is one thing that has not been
702 admitted here, and I want to show this, simply the whole thing all the way across. They have admitted certain columns, but I want to show all of the columns in several cases to have a complete example of what this amounts to, I think it will be helpful.

Examiner Manghum: Cannot you get him to describe the exhibit, and what has been admitted is admitted, of course, and any further testimony you want to offer?

Mr. Holmes: I won't bother with that.

Defendant's Exhibit C. 703

By Mr. Holmes:

Q. Will you produce a bill of lading of a consignment of cigarette papers, dated January 10, 1920? A. I have such a bill of lading here, yes, sir.

Q. On the Steamship Lafayette? A. Lafayette.

Mr. Holmes: I offer that in evidence—just as a bill of lading.

Mr. Nolan: No objection to it. 704

(The bill of lading was received in evidence and marked Lucas Exhibit No. 1. See book of exhibits.)

Q. Have you a freight receipt from the French Line that corresponds with that bill of lading? A. I have the bill from that line under date of January, 1921, in New York, for $423.57, to cover the cost of transportation and loading charges at the point of origin on this shipment of 54 cases.

Q. Is it receipted? A. It is receipted as paid 705
by the American Tobacco Company on January 23, 1920.

Mr. Holmes: I offer that in evidence.

Mr. Nolan: No objection.

(The bill of lading was received in evidence and marked Lucas Exhibit No. 2. See Book of Exhibits.)

Q. Will you offer another bill of lading which applies to the consignments, the subject of this suit? A. I have here a series of bills of lading,

706 *Defendant's Exhibit C.*

covering one payment, covering various shipments that arrived on the same vessel in New York.

Mr. Holmes: Mr. Examiner, may we offer in evidence the bills of lading the freight receipts—that is, the freight bills receipted by the French Line, the check of the American Tobacco Company which paid those bills, together with the so-
707 called voucher which connects them, if there is no objection by Mr. Nolan.

Mr. Nolan: No objection.

(The bills of lading, etc., were received in evidence and marked Lucas Exhibit No. 3. See Book of Exhibits.)

Mr. Holmes: It is not necessary, is it, Mr. Nolan, to identify the signatures of the officers of the American Tobacco Company, who signed the check?

Mr. Nolan: Oh, no, no, provided it has our deposit stamp on the other side.

708 Q. Mr. Lucas, have you a consular certificate, so-called from the French Consul, that applies on any date during the term of this suit? A. I have a copy of a consular invoice covering the shipment moving under my Exhibit No. 1, which contains the invoice of Mr. Charles Pfeiffer, from whom this shipment was purchased; shows the price that was paid for the paper, and shows the rate of exchange in France, French francs to American dollars, as existed on January 3, 1920, when that invoice was issued.

709

Q. You say it shows the rate of exchange. How does it show it? A. In a certificate that reads as follows:—

Q. Never mind how it reads. It is signed by some one. A. It is signed by the American vice-consul at Havre, and bears his official seal.

Mr. Holmes: I offer that in evidence.

Mr. Nolan: I have no objection to it.

(The paper was received in evidence and marked Lucas Exhibit No. 4. See Book of Exhibits.)

710

Q. Mr. Lucas, do you have any occasion, in the course of your business, to have any dealings in French exchange, or did you have during the time covered by the movements of the shipments in suit? A. I had in my own personal business, not business for the company.

Q. Do you recall what your experience was as to rates of French francs? A. My experience was that the French francs were depreciating very rapidly from the early part of 1919, until the latter part of 1920, when they began turning in the other direction.

711

Q. You mean they were at a discount? A. They were at a discount during all of that period and at an increased discount as the time progressed, from the early part of 1919 until the latter part of 1920.

Q. When you say that is your recollection, do you know, as a matter of fact, whether French francs were— A. It is my knowledge, from buying and selling French francs or French bonds.

712 *Defendant's Exhibit C.*

Q. That applies to the time during which these shipments moved? A. Yes, sir.

Q. Now, referring to the shipments of cigarette paper, in books, referred to in the complaint, and distinguished from the shipments of cigarette paper in bulk, do you know from whom it was purchased? A. The cigarette paper in bulk was purchased from L. La Croix Fils.

Q. All of it?

713 By Examiner Manghum:

Q. Where is their place of business? A. I would have to refresh my memory.

Mr. Holmes: As a matter of fact, it is at Angouleme. I have that full corporate name here correctly. Perhaps we had better take it. La Societe Anonyme d'Exploitation de Papeteries L. La Croix Fils. Is that the name?

The Witness: That is the correct name.

714

Q. Ordinarily called La Croix? A. Ordinarily called La Croix.

Q. Do you know where this paper was delivered? A. It was delivered on board boats of the defendant.

Q. You do know where it was delivered? A. Yes.

Q. Where was it delivered? A. On board boats of the French Line.

Q. Referring now to the cigarette paper, not in books, but in bobbins, or otherwise, in bulk, on these shipments that are the subject of this

suit, do you know from whom they were purchased? A. Yes. 715

Q. Who were they purchased from? A. During the first portion of this period, they were purchased from Charles Pfeiffer.

Q. And during the latter portion? A. From the de Mauduit mills.

Q. Do you know exactly what the date was when the change was made? A. I am afraid I will have to refresh my memory as to that date.

Q. I do not know as it makes any difference. 716

Mr. Nolan: After January 24, 1920.

The Witness: That is right.

Mr. Nolan: Prior to January 24, 1920, Pfeiffer shipped them?

The Witness: That is right.

Q. Was it all purchased from Pfeiffer before January 24, 1920? A. Yes.

Q. And from de Mauduite? A. Subsequent to that date.

Q. What is the correct name of de Mauduite? 717
A. Papeteries de Mauduite.

Q. Then the cigarette paper itself was all from Pfeiffer before January 24, 1920, and from de Mauduite after that date? A. Yes, sir.

Q. Where was the paper purchased from de Mauduite delivered? A. At the French port.

Q. Do you happen to know the terms of delivery in each of these cases? A. The terms were f. o. b. the port.

Examiner Manghum: Of origin?

The Witness: The port of origin, yes,

718 *Defendant's Exhibit C.*

on board the vessel—port of origin of the vessel.

Q. Do you know whether the French Line changed its method of converting francs into dollars, so as to make an adjustment at their market rate instead of at the rate of five francs per dollar some time or other? A. They did make such a change and we were so advised by them.

719 Q. When was that? A. That was February 15, 1921.

Q. Do you have any correspondence—

Mr. Nolan: May I have the question and answer again, please, Mr. Stenographer?

(Question and answer repeated by the Stenographer.)

Q. Have you any correspondence with him? A. I have correspondence that we had with them in regard to that.

720 Q. Will you produce that correspondence? A. I have it here.

Mr. Nolan: If this is after the events for which this suit is brought, I object to it. What change in conditions in the world of trade has had to do with it is one thing, but it has nothing to do with this litigation, Mr. Examiner, and I certainly object to it.

Mr. Holmes: Do you want to hear any argument?

Defendant's Exhibit C. 721

Examiner Manghum: When was this?

Mr. Holmes: This correspondence was all after the time in suit, but before you rule, if you are going to rule against me, I should like to be heard.

Examiner Manghum: I think it has some bearing on the case.

Mr. Nolan: Then I will make a formal objection that it is incompetent, irrelevant and immaterial, not within the issues.

Examiner Manghum: Objection over- 722
ruled.

Mr. Nolan: Exception.

Q. Will you produce the correspondence? A. Yes, sir.

Mr. Nolan: I object to it as not within the issues; incompetent.

Examiner Manghum: Same objection as before?

Mr. Nolan: Yes.

Examiner Manghum: It will be received. 723

Mr. Nolan: Exception, please.

The Witness: One of the original letters in the French language and the translation in English.

Mr. Holmes: No objection to the copy?

Mr. Nolan: I do not object to it on the ground it is a copy. We may want to revise your translation.

(The papers were received in evidence and marked Lucas Exhibit No. 5.)

(Lucas Exhibit No. 5 is as follows):

724 *Defendant's Exhibit C.*

TRANSLATION OF LETTER FROM COMPAGNIE GENERALE TRANSATLANTIQUE

6 Rue Auber, Paris, February 10, 1921.

The American Tobacco Company,
111 Fifth Avenue,
New York.

Gentlemen:

725 We have the honor to reply to your letter of January 25th, contents of which have our attention. We can advise you that the present exchange will be stabilized for a certain length of time at the high rate and we have made the decision that henceforth—that is to say: for the Steamers leaving France, beginning February 15th, that the expense payable in New York at the rate of exchange the date of the arrival of the Steamship—this expense being taxed in French money when it is
726 payable at destination, the same as when it is payable in advance.

The question which you raised will obtain herewith satisfaction. At any rate, this measure which already had our attention when your letter reached us and which brings us to express our regrets that we cannot give you a favorable reply regarding a refund for past shipments which you have so kindly given us.

We might add that we have not in this instance shown any favoritism to any

Defendant's Exhibit C. 727

clients. The method of procedure will be applicable on the whole to our traffic, without exception. The expense, in case where it was payable at destination, the rate in transforming to dollars at the rate of 5 Franc gold. It is better for each to pay the expense on departure, if he cares to benefit by the results.

(Original letter):

728

"Compagnie Generale
Transatlantique
6, Rue Auber.

Adresse Telegraphique Transat.

Paris, le 10 Fevrier 1921.

Traffic

The American Tobacco Company
111 Fifth Avenue,
New York. 729

Messieurs,

Nous avons l'honneur de repondre a votre lettre du 25 Janvier dont le contenu a eu toute l'attention qu'il meritait.

Nous avons a vous faire part que, le change parassant devoir se stabilizer encore pour un certain temps a un taux eleve, nous venons precisement de prendre la decision de percevoir desormais, c'est-

730 *Defendant's Exhibit C.*

a-dire pour les naivres quittant la France a partie du 15 Fevrier courant, letfret payable a New York au cours du change du jour de l'arrives du navire, ce fret etant taxe en monnaie francaise, quand il sera payable a destination de meme qu'il l'est quand il est paye d'avance. La question que vous soulevez obtiendra ainsi satisfaction.

Toutefois, cette mesure, a laquelle nous
731 nous etions deja arretes lorsque votre lettre nous est parvenue, ne saumit avoir d'effect retroactif et ceci nous amene a vous exprimer nos regrets de ne pouvoir accueillie favorablement la demande de detaxe, pour les envois passes, que vous avez bien voulu nous soumettre.

Nous adjouterons que vous n'avez ete, en cette circonstance, nullement defavorises vis-a-vis des autres membres de notre clientele, attendue que la methode precedemment suivie etait applicable a l'en-
732 semble de notre trafic, sans exception. Le fret dans le cas ou il etait paye d'avance, etait taxe en francs, mais lorsqu'il etait payable a destination, le taux en etait transforme en dollars au change de 5 frs; or, il etait loisible a chacun de payer le grat au depart, s'il lui convenait de beneficier de la difference de fet qui en results.

Vouillez agreer, Messieurs, l'assurance de notre consideration la plus distinguee.

Le Chef du Trafic."

Defendant's Exhibit C. 733

By Mr. Holmes:

Q. Do you know anything about the tariffs or freight rates of other lines of steamers plying beween New York and French ports during the period in suit? A. Yes, sir.

Q. What do you know about the freight rates of such lines?

Mr. Nolan: That is objected to as immaterial, also as incompetent.

Examiner Manghum: Overruled. 734

Mr. Nolan: Exception.

A. The freight rates by the vessel routes were almost universally made by conference agreements. If not, they were made by the loading line and the other lines either met the same rate or a lower rate, and that was true during this period between these ports, the rates being made by the French Line and the other two competing lines following.

Q. You mean to say the French Line was not making a better rate than the other lines? A. 735 Their rates were as high, if not higher, than the other lines.

Q. What other lines were available for shipment of these goods mentioned in the complaint? A. The Cosmopolitan Line and the White Star Line.

Q. Mr. Lucas, if an American railroad had two different rates, so that the rate was less in the case of prepayment than it was in the case of payment on delivery, what would be the rate that the Interstate Commerce Commission would ap-

736 *Defendant's Exhibit C.*

ply in the case of an objection made by the shipper?

Mr. Nolan: I object to it as—
Examiner Manghum: Objection sustained.
Mr. Holmes: Exception.

Q. Mr. Lucas, have you ever in your experience as a traffic man, come across an instance where there were two rates on a commodity, or
737 two possible rates on a commodity, depending upon some condition where the Interstate Commerce Commission held that the carrier was bound to disclose to the shipper the conditions on which he could get the lower rate if he was to bind the shipper to the conditions?

Mr. Nolan: That is objected to.
Examiner Manghum: Sustained.
Mr. Holmes: Exception.

Mr. Lucas, in the course of your business,
738 have you ever had any occasion to settle claims for damages or short delivery or one thing and another against the French Line? A. Yes.
Q. Any during the period in suit? A. Yes, we had shortages of some of these—

Mr. Nolan: Wait; just yes or no, please.

Q. Would the claims be made in francs or dollars?

Mr. Nolan: That is objected to. It is immaterial what happened about a claim

739

for shortage or claim for damages of any sort.

Examiner Manghum: Objection sustained.

Mr. Holmes: Exception.

Q. Did you ever have any correspondence with the French Line in regard to their method of transferring francs into dollars or dollars into francs, in regard to damage claims? A. Yes.

740

Mr. Nolan: That I object to also as incompetent.

Examiner Manghum: It is the same question.

Mr. Holmes: Yes, but if they settled the damage claims on the basis of current rate, why shouldn't they settle—doesn't that have some bearing on the propriety?

Mr. Nolan: I might enlighten Mr. Holmes that our courts here have held that that is the way to settle damage claims, and that has nothing to do with this litigation.

741

Examiner Manghum: Objection sustained.

Mr. Holmes: Exception.

Q. Mr. Lucas, referring to this Exhibit A, Columns 15 and 16, one is headed, francs per dollar, and the other, dollars per franc. Will you explain how that was computed? A. Where we had the rate expressed in francs per dollar, by a computation of dividing one dollar by the number of francs quoted per dollar, we obtained

742 *Defendant's Exhibit C.*

the number of dollars per franc. For instance, on the first line where 5.88 francs per dollar is expressed at the rate of exchange, that would be equivalent to .1701 dollars. The same method was pursued in the other column.

Q. And the same method was pursued in Columns 25 and 26, and 20 and 21, is that right? A. Yes, sir.

Q. Now, Column 11, 12 and 13, how did you arrive at Column 13? A. I can best explain that
743 by taking my Exhibit No. 1, covering the shipment from Havre, by steamer Lafayette, January 10, 1920, which appears near the bottom of the sheet. This bill of lading specifies the amount of charges in dollars, $423.57, which is indicated in Column No. 10, and verified by the receipted freight bill. This amount on the basis of five francs to the dollar is equivalent to 2117.85 francs, as indicated in Column 13. The bill of lading carries an item of $39.96, representing loading charges, or charges at the port of embarkation, which at the same basis is equal to
744 199.77 francs, which would leave—that is indicated in Column 12—which would leave for Column 11, 1918.08 francs, and this amount is the product of the measurement as indicated on the bill of lading. 31.968 cubic meters at 60 francs per cubic meter, and on a similar basis would determine the other items in those columns.

Q. Have you made a total of several of those columns? A. All columns in which the amounts are expressed in dollars, except the exchange columns, have been totaled.

Q. What is Column 27? A. Column 27 represents the amount in dollars produced by convert-

745

ing the francs in Column 13, at the rate of exchange in effect in New York on the date the freight charges were received by the French Line.

Mr. Holmes: I think that is sufficiently explained in the amended answer.

Q. Mr. Lucas, have you any evidence of exchange rates quoted on any date during the time that this complaint refers to, on French exchange? A. Yes, sir.

746

Q. What is it? A. I have two letters that quote the rate of exchange in New York, on specific dates covered by this complaint.

Q. Written by whom? A. The letters were written by representatives of the Freight Traffic Manager of the French Line.

Mr. Holmes: I offer that in evidence.

Mr. Nolan: I object to that; that is not proper proof of what the rate of exchange is; what the freight traffic man or the president of the French Line said that it was, would not make any difference.

747

Mr. Holmes: Well, it is an admission in the nature of a declaration against interest.

Mr. Nolan: Object to it further on the ground that it has not been proved that the person who wrote the letter had authority to write it.

Mr. Holmes: Perhaps we will have to prove that he did.

Examiner Manghum: Not admitted.

Mr. Holmes: Exception.

748 *Defendant's Exhibit C.*

Q. Mr. Lucas, do you know of any case in interstate commerce where the carrier makes a different charge, when shipments are prepaid from what they do when they are not prepaid? A. No, sir.

Q. Never knew of such a case? A. Never heard of such a case in interstate commerce in the United States.

749 Mr. Nolan: Now, I ask that all of that be stricken out, as interstate commerce has nothing to do with this proceeding. It is all incompetent. It has been ruled upon once by your Honor, and counsel has brought it up again.

Examiner Manghum: The same question was ruled on before.

Mr. Holmes: Mr. Nolan, there is a great deal of detail in here. Some things are rather confusing. Perhaps when I get the record, it will occur to me that I have not proven something that I thought I had

750 proved. Perhaps there will be no objection to reopening on some small matter, if we find it necessary.

Mr. Nolan: You are asking me to stipulate away some of my client's interests, but I will say this, if the Court desires to open it, I will not object. I think that is the best I can say.

Mr. Holmes: Thank you.

Examiner Manghum: Is that the conclusion of your examination?

Mr. Holmes: That is all.

Examiner Manghum: Cross examination.

Defendant's Exhibit C. 751

Cross Examination by Mr. Nolan:

Q. What were your particular duties, Mr. Lucas, in connection with the American Tobacco Company at the time of the transactions in suit? A. At the time these shipments moved, I was handling almost exclusively domestic traffic; some export traffic, and a little import.

Q. Did you handle this traffic? A. Not at this time.

Q. Then you are testifying today from having gone over the records of the company, not from 752 having had personal charge of it at the time? A. I did not have personal charge as to the payment of these or the verifications of the rates, but the preparation of the statement is from the records of the company, and from other sources as indicated.

Q. Then your testimony is not from your personal knowledge or connection with the transactions at the time, but your connection with it since as a lawyer or lawyer's assistant in connection with the matter? A. No, my testimony, as bearing on that feature of the case is from 753 actual knowledge.

Q. Your duties, both at that time and at the present time, consist of preparing the various cases before the Interstate Commerce Commission and any other bodies that your company has to appear before in connection with freight rates and traffic? A. Well, that is a portion of my duties, but my duties consist also of seeing that we pay the proper charge on all shipments that are moving.

Q. You are not admitted to the bar, I take it? A. No, sir.

754 *Defendant's Exhibit C.*

Q. You should be, it is a gift with you, from what I have seen today. A. Thank you.

Q. Now, you testified that the French Line made the rate coming out of Havre, and it was followed by the other lines. That was not from your own personal knowledge? A. That was from my knowledge that I have gained since that time.

Q. That is, you have inquired and understand that is the fact, and, therefore, you have stated
755 what you heard from some one else? A. Based also on the fact that I know that it is being done today. I actually know it now.

Q. That part of your testimony has been based upon hearsay from others with respect to at least that feature? A. Hearsay and conclusions that I have had to draw from facts presented to me.

Q. You stated that there were only three lines running out of Havre at the time, on which these shipments could move forward, the French Line, the Cosmopolitan and the White Star. Did you
756 make that statement because any of the contracts you had with your seller provided you could ship only on those lines? A. Our contracts did not provide for shipping on any line.

Q. Then, I take it, your contracts merely provided that the goods should be delivered to you for a certain price, free on board some ship? A. Yes.

Q. Did you familiarize yourself with the conditions in the port of Havre, for instance, so that you could verify your statements that those were the only lines upon which you could have

757

shipped those goods? A. I have verified to this extent, that they were the only responsible regular lines. We do not make our shipments by tramp lines or lines that have very infrequent movement.

Q. Do you consider Furness, Withy & Company an unreliable line? A. Furness, Withy, I understand, are more in the way of brokers who operate tramp ships in various routes. They have some regular routes.

Q. Don't you know that at that time they had 758
a regular route out of Havre for New York? A. I do not.

Q. Do you know that the Lloyds Belgicque, the Belgian Line, ran a line out of Havre during the period involved? A. If they did, they were very infrequent sailors.

Q. Was your testimony intended to apply to the port of Bordeaux as well as to the port of Havre? A. Yes, sir.

Q. Didn't you know that during the year 1919, there was a regular line ran between Bordeaux and New York for the purpose of fostering the 759
American flag, known as the State Steamship Company? A. No, I did not, but my experience in connection with vessels operated at that time, by lines who did not establish a regular service was that it was inadvisable to use them.

Q. Then I take it from what you say that the American Tobacco Company did exercise some direction or choice as to what line should carry these goods? A. Only in that we restricted the movement to lines that were in regular service.

Q. And who did you give those restrictive in-

760 *Defendant's Exhibit C.*

structions to? A. Well, those instructions would have been issued only to the mills that furnished the paper, or the broker, in case of Pfeiffer, from whom the paper was bought.

Q. Now, were those instructions issued from the New York office? A. Perhaps not written instructions. They very likely were verbal instructions, coming from somebody connected with the New York office.

Q. That is, some traveling man sent out from
761 the New York office with authority to see your—

Mr. Holmes: I object to this as not cross examination, making him your own witness.

Q. (Continuing.) With authority to see your sellers on the other side and talk over their contracts, giving them the restrictive instructions as to what lines these goods were to be carried on?

Mr. Holmes: I object to this, as not cross examination. If he wants to make him his
762 own witness—

Mr. Nolan: The witness has stated that they restricted to these lines, and they had a good reason for it, and the names of the lines were brought out on direct examination. I think I have a perfect right to go into that. It is not new matter in any sense.

Mr. Holmes: When you ask about its instructions to the different companies, that is looking towards making our customers our agents for the purpose of shipment,

and anything of that sort, seems to me, brings it into direct examination, rather than cross examination.

Examiner Manghum: It seems to me the question is to be limited as to why they were restricted to particular lines, not as to detail as to giving any instructions.

Mr. Nolan: I think, your Honor, that this is a question that comes well within the rule as to cross examination, that any matter that has been opened on direct ex- 764
amination—and this was more than opened up, and this was gone into—the witness put his own interpretation as to how these rates were fixed—that any matter that has been opened up on cross examination, may be examined into fully on its collateral branches by cross examining counsel, subject always to the judgment of the Court. But here is something that goes to the very root of this case. We have got to find out the situation over there. Here is a witness who is in a position to tell— 765
who assumes to tell what was done and how it was done, and why it was done, under the examination of his own counsel, and I certainly should be entitled to go deeply into that collateral branch and find out how much he knows and why he knows, and what effect it had on the movements of these goods. I do not consider this as being new matter in any sense of the word, and I appeal to you to give me an opportunity to go widely into the cross examination of all of these questions.

766 *Defendant's Exhibit C.*

Examiner Manghum: As I understand the question, it did not go into the matter of rate making, or as to why they restricted their shipments via particular lines.

Mr. Nolan: It went a little bit further. It went to this extent; he said some one had restricted them. It was done by word of mouth, he said, so I have asked him the question if that word of mouth was by
767 some one from the New York office, who went over there with authority to talk to the seller of their goods.

Mr. Holmes: Mr. Examiner, my questions were directed to the matters of rate making, and I do not think I opened up anything at all, that had to do with the instructions from the New York office to any customer.

Mr. Nolan: I am going to show that there were other lines, and if the New York office, with the knowledge that these
768 goods could have been shipped on any one of a dozen lines, and any of a hundred ships, if the New York office gave instructions, restricting the carrying of these goods to the French Line, then the New York office knew and had a right to know what the French Line rates were, and they cannot hide behind the fact that they did not know about it until their bookkeeper found out they were paying more than somebody else.

Examiner Manghum: Upon that condi-

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tion, the witness will be required to answer the question.

Mr. Holmes: Exception.

The Witness: What is the question?

(Question repeated by the Stenographer.)

The Witness: We had no traveling man during the period of these shipments.

Q. What do you mean by some one from the New York office giving verbal instructions? A. One of our officials may have visited one of these mills.

770

Mr. Holmes: I object to that. You don't know whether he did or not.

The Witness: No, I do not know.

Examiner Manghum: If the witness does not know, he should not testify.

The Witness: I do not know whether any instructions were given verbally or not.

Q. From your position as assistant traffic manager, that is the inference you have drawn when you came here today to testify?

771

Mr. Holmes: I object to that.

Examiner Manghum: Objection sustained.

Mr. Nolan: Exception.

Q. Have you any records, Mr. Lucas, in your office, which will show whether any of the officials of your company went to France and saw any of these sellers of the goods to you during the period involved in this suit?

772 *Defendant's Exhibit C.*

Mr. Holmes: I object to that. I may say that officers and employes are going and coming from France from time to time.

Examiner Manghum: The witness testified he did not know.

Mr. Nolan: I asked him if he had any records in the office that would show that. I want to get back his recollection.

Mr. Holmes: If he knows whether they have any records or not.

773 A. I do not know whether they have any such records or not.

Q. Who, in the American Tobacco Company was charged or had charge of the receipt of these various shipments? A. In New York?

Q. In New York? A. The Supply Department.

Q. Who is the head of the Supply Department? A. At that time, Mr. Lang.

Q. Is he still with the company? A. No, sir.

Q. Do you know what company he is with now? A. No, I do not.

774 Q. Who had charge of auditing and paying the freight bills for these shipments during that period? A. They were checked by the man in charge of the Paper Department. I think Mr. Millington had charge of that at that time.

Q. Was it the duty of the traffic manager to check up freight rates on commodities handled by your company? A. All freight rates, except import matters, and on those we had no jurisdiction at that time.

Q. Who had jurisdiction of import matters? A. The freight charges were paid as rendered by

775

the Supply Department, and were not checked by any traffic man.

Q. Did you have an import division in your establishment? A. Yes.

Q. Who was the head of the import division? A. Mr. Millington.

Q. What were his particular duties as head of the import division? A. He had charge of both import and export, and attended to the receipt and the shipping of our import and export business.

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Q. Then, if anybody was charged with the duty of checking up on ocean freight rates, it would be Mr. Millington, I take it? A. Yes, sir.

Q. Who had charge of the correspondence with Pfeiffer, La Croix and De Mauduite? A. Part of that might have been carried on by Mr. Millington, but it was in the Supply Department.

Q. The Supply Department? A. Yes.

Mr. Nolan: Have you brought any of that correspondence with you, Mr. Holmes? You remember I wrote you a letter and asked you if you would let us have any correspondence you had with reference to these shipments, or with reference to the contracts.

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Mr. Holmes: No, I did not realize that. I have not any correspondence to offer. I am sorry.

Mr. Nolan: We will get along without it, I guess.

Q. Is it a fact that the American Tobacco Company are interested as stockholders in the de Mauduite firm or company?

778 *Defendant's Exhibit C.*

Mr. Holmes: Now, I object to that, not that the witness does not know, but I object to it as immaterial and incompetent. The matter of our being stockholders would not bind us to anything at all.

Mr. Nolan: I intend to show that they are not only large stockholders, but their holdings of stock in the company gives them control of the de Mauduite outfit. If that is so, and these goods have been
779 shipped by the Mauduite constantly to them by the French Line, it is going to have a whole lot to do with whether they had notice or not of our freight rates, irrespective of the fact that they allowed two years to go on without investigating, and finding out what rates they were paying.

Mr. Holmes: Mr. Examiner, the fact that we are stockholders in a company, some of whose officers we did not know, certainly cannot bind us any. I might hold ten shares of stock in the American Tobac-
780 co Company or Liggett & Meyers, and their knowledge would not be my knowledge, and if I held the controlling interest their knowledge would not be my knowledge.

Mr. Nolan: No, but a course of business that lasted for over ten years, and two years of which is in dispute, that course of business running blindly without any investigation as to one of the chief ends of the business, when they were interchangeable with their boards of directors and their control of the stock, that has

a great deal to do with the question of whether or not they had notice.

Mr. Holmes: Mr. Examiner, the question, it seems to me is merely a technical question whether the knowledge of a stockholder is to be imputed to him because the corporation officer had such knowledge.

Mr. Nolan: The knowledge of a controlling stockholder. There is quite a difference between John Jones, who owns a thousand dollars worth of stock, and the other 782
stockholder who owns $99,000 worth of stock.

Mr. Holmes: Not the least in the world. It has got to be some agency established. If we did not, as a matter of fact, know, the fact that a corporation in which we held stock knew, certainly cannot bind us.

Examiner Manghum: Would you mind reading the question?

(The question was repeated by the Stenographer.)

Examiner Manghum: Is the de Mauduite 783
Company, the one from whom you buy your cigarette papers?

Mr. Holmes: That company was the one from which we bought our cigarette papers, in bulk, beginning January 24, 1920.

Mr. Nolan: But the other two concerns, sir, they had a contract in writing which provided that the goods were to be sold to them and paid for at a certain price, free on board a ship. With the de Maud-

784 *Defendant's Exhibit C.*

uite Company they have no contract, but on the contrary they control the stock of that company to such an extent that they have control of the entire output.

Examiner Manghum: In other words, your position is that the de Mauduite Company and the American Tobacco Company are one and the same, both consignor and consignee?

Mr. Nolan: They are one and the same,
785 because these goods were bought from the de Mauduite Company on a cost plus basis, and that has a whole lot to do with this case, when the American Tobacco Company has been damaged to the extent they have on the de Mauduite goods.

Mr. Holmes: I still urge, the only theory in law on which that is admissible is that a stockholder is chargeable with the knowledge that the corporation has in which it holds stock and until—

Mr. Nolan: A controlling stockholder is,
786 particularly when the business is done on a cost plus basis.

Mr. Holmes: And until all of those things are shown, that I am now assuming —in fact, until we are shown to have knowledge, it is entirely immaterial and not binding on us what the de Mauduite Company, a French corporation, knew.

Examiner Manghum: It seems to me the relationship between the two companies is certainly very important as to who was damaged and who is entitled to reparation.

Mr. Holmes: Well, I take it, by this ques-

tion he intends to bring out or to charge us, the American Tobacco Company, with knowledge. Now, unless something else is shown besides the fact that we owned a certain amount of the stock, one share, one-third, two-thirds, no matter how much, until some other fact besides our control is brought out, it seems to me that there is no conceivable theory upon which we could be charged with knowledge that an officer of the de Mauduite Company had, 788 and furthermore, I think that is a matter that is not admissible until it is shown that the de Manduite Company had some knowledge; that would seem to me to be a necessary preliminary to bring this in anyhow, but I don't want to get your mind off the others.

Examiner Manghum: Did I understand the de Mauduite Company was the consignor of some of these shipments?

Mr. Holmes: That is right.

Examiner Manghum: The American To- 789 bacco Company was the consignee?

Mr. Holmes: Yes, sir.

Examiner Manghum: The American Tobacco Company is here claiming damage, by reason of the freight rate?

Mr. Holmes: That is right.

Examiner Manghum: It is certainly material whether or not the de Mauduite Company and the American Tobacco Company are essentially one and the same companies. For that purpose, the evidence is admissible.

790 *Defendant's Exhibit C.*

Mr. Holmes: Well, then, I object to it on the further ground that whoever knew about it, it does not effect the merits of this action.

Examiner Manghum: It is admissible for the purpose as stated.

Mr. Holmes: Exception, on the ground that it is immaterial, incompetent, irrelevant and not binding on this complainant; that the knowledge, if any, that an
791 officer of a corporation has, is not knowledge that any stockholder is chargeable with having, irrespective of how much stock he might hold, and on the further ground that it has not yet been shown that anybody in the de Mauduite Company had such knowledge.

Examiner Manghum: The witness testified that you bought from the de Mauduite?

Mr. Holmes: That is right, after a certain date.

Examiner Manghum: He is certainly
792 entitled to cross examine him as to the relationship between the companies, now, on the question of notice, if it is only for the purpose of showing notice, I say the evidence is inadmissible, but on the question of the relationship between the two companies and the transportation transaction, that is pertinent to the issue in this case.

Mr. Holmes: What I am arguing simply is that evidence that the knowledge of de Mauduite was our knowledge is inadmis-

sible; so far as the relation between the companies is concerned, I don't care.

Examined Manghum: I think I have cleared that.

Mr. Holmes: Do I understand your ruling to be that it is admissible as bearing—

Examiner Manghum: He is entitled to know damage that might result from these particular transportation transactions.

Mr. Holmes: What I am asking is, is it admissible as charging us with knowledge? 794

Examiner Manghum: No, I did not admit it on that ground.

Mr. Holmes: That is the point I desire to amplify. Will you put that on the record that it is not admissible on that ground.

Examiner Manghum: Read the question, please.

(The question was repeated by the Stenographer.)

Mr. Holmes: Precisely what is the purpose of that question? 795

Mr. Nolan: You are making a claim for damages here against the French Line, for something with which you had nothing to do, apparently, because you were only paying a cost plus basis, attempting it despite all your de Mauduite claims.

Mr. Holmes: I object, as incompetent, irrelevant and immaterial, not any basis, in addition to the several objections, on the ground of its being inadmissible as binding us or showing any knowledge of

796 *Defendant's Exhibit C.*

the officers of the American Tobacco Company.

Examiner Manghum: It is being admitted for the purpose stated before.

The Witness: I do not know just what relationship, but I understood there was some relationship between the two companies.

By Mr. Nolan:

797 Q. Have you any written contract with de Mauduite? A. I understand that there was a contract for selling these goods to us, after this January 24, 1920, on a cost plus basis at the port.

Mr. Holmes: Well, I object to that.

Examiner Manghum: At what port?

Mr. Holmes: I object to that, unless you know.

The Witness: I do not know definitely.

798 Q. Did you not draw up a stipulation which states those facts? A. I did not draw it, no, sir.

Mr. Holmes: Let us see it. I drew it.

Mr. Nolan: Will you make that stipulation on the record, or do you want to withdraw that stipulation?

Mr. Holmes: I seem to have stated here that the goods from de Mauduite were charged to the American Tobacco Company on a cost plus basis.

Mr. Nolan: You also stated there that it controlled the stock, did you not?

Defendant's Exhibit C.

Mr. Holmes: Yes, I stated that.

Mr. Nolan: I am asking you now if you want to withdraw that stipulation?

Mr. Holmes: I do not see any objection to making it.

Mr. Nolan: I will appreciate it if you will put it on the record, what it says there.

Mr. Holmes: I will stipulate this: After December 24, 1920, the shipments of paper —that is, the shipments of paper in bobbins or bulk, not cigarette paper, came not from Pfeiffer, but from de Mauduite. The American Tobacco Company had become a stockholder in the corporation last named to an extent sufficient to give it control of the output of the mill. It made no written contract with the de Mauduite Company, but goods were charged to the American Tobacco Company on a cost plus basis, at the port in France where delivered to the steamship.

The Witness: You said December; you mean January.

Mr. Holmes: Change that date to January 24, 1920.

Mr. Nolan: Thank you.

By Mr. Nolan:

Q. Now, Mr. Lucas, can you state positively that the American Tobacco Company did not give its express instructions that these goods were to be shipped on the French Line? A. I could not say whether they did or not.

802 *Defendant's Exhibit C.*

Q. Well, in the course of these investigations that you made to prepare for this case, and on which you base your testimony, were you not able to find out whether they did or did not? A. There may have been specific cases where we had to have a certain brand of paper immediately, and we told them to forward on the first vessel. Those instructions were in order to get the goods here.

Q. How were these goods ordered, just under
803 these contracts, and the manufacturer shipped them as they manufactured them or saw fit, or were they ordered in quantities on order blanks or by letter from time to time? A. Both. We had one contract that provided for the entire output of one mill, and the others were for a certain quantity which they were to furnish as they were able.

Q. Now, can you say whether or not, when you sent in your orders for shipment of the goods, you said ship on such and such a ship, or ship by way of the French Line, or any instructions?
804 A. I have seen copies of some of those orders that gave no instructions as to how to be forwarded.

Q. They left the method of forwarding and the circumstances of forwarding to the shippers of the goods? A. Yes.

Q. Do you think that last answer of yours applies to practically every shipment? A. No, I could not say that. I say I saw copies of a few of the orders that gave no specific instructions. Whether it applied to one-half of them or one-third, I cannot say.

Q. Well, in preparing this case, and you are

used to preparing these kind of cases for trial, did you not go into that question at all? A. No, I did not. 805

Q. Can you produce at a later time, those orders and letters which were sent to these three sellers for these various goods during the period involved in this suit? A. I believe we have copies of those orders, but as I say, the order with one of the companies was a continuous order.

Mr. Holmes: Haven't you got it here—that big order—aren't they here some place? Any orders we have got? 806

Mr. Nolan: Mr. Holmes, I have three or four bills of lading here, which we managed to find, as we haven't got all of them either, and I want to offer those in evidence, in addition to yours, if you find them in order.

Mr. Holmes: What is the purpose of offering them?

Mr. Nolan: They just happen to be some from the Mauduite—that is all from Havre.

Mr. Holmes: No objection to them. 807

Mr. Nolan: I would like to offer those in evidence.

The Witness: They cover shipments to us.

Mr. Nolan: They are shipments to you, yes, from de Mauduite.

Mr. Holmes: Mr. Examiner, I haven't made any objection to this line of testimony, but I don't exactly know how it is material if we ordered goods shipped on the French Line, because it might have been the next boat or something. I don't

808 *Defendant's Exhibit C.*

exactly know how that binds us to anything.

Mr. Nolan: Counsel frequently has to object because he does not know what effect it will have. It is not always proper to require counsel to explain.

Mr. Holmes: I was not objecting, but I was just making a little statement, preliminary to a possible objection that I might make—that I will make when the
809 the bills are offered.

Examiner Manghum: Are you going to object to these?

Mr. Holmes: No objection, no.

(The paper was received in evidence and marked Exhibit O.)

Exhibit O is as follows:

Supply Department.

The American Tobacco Company,
111 Fifth Avenue.
New York, June 20, 1919.

810

This order number must appear on invoice.
H. 12393.

Please ship by

To US as usual A/C The American Tobacco Co.

Please ship 1,750,000 wheat straw cigarette books of 175 leaves each per month

Defendant's Exhibit C. 811

case containing 10 M books in bundles of 100 shipments to begin September 1, 1919.
L La Croix Fils

Angouleme, France.

Supply Dept.

THE AMERICAN TOBACCO COMPANY,

By

812

By Mr. Nolan:

Q. I hand you a paper, Mr. Lucas, and ask you to tell me what that is?

Mr. Holmes: Now, I suppose I put my objection in?

Mr. Nolan: If you are going to object that it speaks for itself, I will change the question.

Mr. Holmes: No.

813

A. That is a copy of an order issued by the New York office of the American Tobacco Company on January 30th, to the de Mauduite Mills in France for a shipment of cigarette paper, to be forwarded to New York City.

Mr. Nolan: I offer it in evidence.

(The paper was received in evidence and marked Exhibit P.)

Exhibit P is as follows:

814 *Defendant's Exhibit C.*

Supply Department

American Tobacco Company,
111 Fifth Avenue,

This order number must appear on invoice.
J 2237

New York, Jan. 30, 1920.

815

Please ship by

To US as usual Chg The American Tobacco Co.

5,000 bobbins 1 — 30 M/M.

43

February shipment.

816 Society Papeteries de Maduit
Quimperly, Finisterre, France.
Supply Dept.

The American Tobacco Co.
By

By Mr. Nolan:

Q. Now, Mr. Holmes, I ask you to see if you have any of those orders in your files to either of the other concerns, La Croix or Pfeiffer?

Mr. Lucas, would you say that this order which

817

has been marked Exhibit P, is similar to other orders given by the American Tobacco Company to de Mauduite? A. Similar to some others. I saw some other copies.

Q. Well, are there some of them that are different from that, if so in what particular? A. Not that I know of.

Q. Have you in your files copies of any orders to La Croix? A. Here is a copy of an order issued in New York on June 20, 1919, on La Croix Fils for shipment of paper.

818

(Paper was received in evidence and marked Exhibit Q.)

(See Book of Exhibits.)

Q. Would you say, Mr. Lucas, that Exhibit O is similar in form to other orders given by the American Tobacco Company to the La Croix Fils during the entire period in suit? A. As far as I know, except as indicated before, where there might have been occasions for something specific.

Q. Have you any form of order from the American Tobacco Company to Pfeiffer? A. Here is an order issued on Charles Pfeiffer on November 20th, 1918.

819

Q. That is not in the period of suit. See if you can find one after April 7, 1919? A. I don't believe there is any during that period.

Q. If I understand the situation correctly, Mr. Lucas, the American Tobacco Company did not give any orders, so far as you are aware, for these goods to be shipped on the French Line? A. Except in specific cases where they might have ordered by cable for a particular shipment to come by the French Line.

820 *Defendant's Exhibit C.*

Q. Will you search through other records and find those cables for me? A. I can determine whether there was such during this period.

Q. All right, and at a later date, I will just ask you to verify that. Do you know the circumstances under which the American Tobacco Company finally decided to inquire about rates from the French Line? A. Yes, sir.

Q. Were you the gentleman responsible for discovering the negligence of the company in the two years previous? A. Partially.

821

Q. It was negligence, in your opinion, was it not?

Mr. Holmes: I object to that.

Examiner Manghum: That is an improper question.

Mr. Nolan: That is all.

By Mr. Holmes:

Q. What does that "as usual" mean, if I may ask on that order?

822

Examiner Manghum: I identify it as Exhibit O.

A. It means to ship in the manner that they have been shipping.

Q. Well, that is all, is it not? A. If it is permissible for me to consult my associate Mr. Lucas before asking a question?

Mr. Nolan: I guess there is no harm.

A. Whether that indicates that we had any knowledge in New York as to a different basis of

823

rates, on two different ways of shipping, whether you prepaid it or not.

By Mr. Nolan:

Q. How do you know? You just testified that you had nothing to do with it at that time? A. It says to ship as usual. It is self evident; they never put that on—didn't have any new knowledge.

824

Mr. Holmes: You asked yourself the question.

The Witness: I will just make a statement.

Examiner Manghum: Let us maintain some semblance of formality here.

Mr. Holmes: Yes, certainly.

By Mr. Holmes:

Q. Those words, "as usual", on Exhibit O, do they indicate that the man who wrote about this order had no knowledge of any difference in rates, as to whether they should be paid in France or here? A. It indicates that he had no such knowledge.

825

Mr. Nolan: I would just like to ask a question or two about that.

By Mr. Nolan:

Q. Which of those two words "as usual" indicates that to you? A. "As usual".

826 *Defendant's Exhibit C.*

Q. Which one of those means that the man who put "As usual" down on there, didn't know there were two rates, or that he knew there were two rates, and wanted the old system to go? A. It shows that he had no knowledge of an option, and therefore he told them to ship in the usual manner—that is, by a regular boat line and collect in New York.

Q. How do you know that with an option that had been in existence for a year and a half that
827 he did not have knowledge that there was such an option, but elected to pay at New York? A. I have no knowledge that the option was in effect that length of time.

Q. Haven't you just suggested to counsel to ask that question so you could put in that answer, without any regard to what was in the gentleman's mind, but to straighten your own side of the case, Mr. Lucas? A. Just to show what was not in the gentleman's mind when he put it there?

Q. You suggested the question to counsel, did
828 you not? A. Yes, because I am associated with him.

Q. So you could give that answer as to which thought was uppermost in the mind of a man that you don't know his name, now, who wrote that order out? A. Not to suggest the thought uppermost in his mind.

Q. Who was the man that wrote that order out, do you know? Give us the correct name of this gentleman? A. There is nothing there to indicate who issued it.

Q. Then you know what was in the mind of a man that you do not know his name, that is all?

829

A. No, I am indicating there was nothing in his mind as to that feature.

Mr. Holmes: I move to strike out the testimony, beginning back there with the question I asked in regard to what this indicated. Any objection?

Mr. Nolan: I certainly do object. I would like that record to be where it can be seen. The witness has been too anxious to bolster up his case with that last testimony.

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Examiner Manghum: You put the question. I think it should stand on the record.

Mr. Holmes: Very well.

Examiner Manghum: Mr. Lucas, I have one or two questions I would like to put to you.

By Examiner Manghum:

Q. One of your exhibits, I believe, shows the date of delivery of these shipments? A. Column No. 2 shows what we assumed, when our original exhibit was made, was the arrival of the vessel at New York, but that information was obtained from newspaper information, and it may vary one or two days. The delivery would follow within a day or two after the unloading of the vessel or the arriving of the vessel.

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Q. These bills of lading show the rate applicable? A. They show the rate that was assessed on shipments.

Q. The rate that was assessed? A. Yes, assessed in dollars.

832 *Defendant's Exhibit C.*

Q. Is that also the rate that was paid? A. Yes, sir.

Q. Your exhibit, I believe, also shows the—for instance, paying your rate in New York, shows what would have been the corresponding rate in francs at France? A. Not in France.

Q. Rather than on the basis of five francs to the dollar? A. We show three options here. We show three bases here. First, we show what we did pay; then we show what would have been
833 the charges, based on the rate of exchange in France on the date of the bill of lading.

Q. The date of the bill of lading? A. That exchange is expressed both in francs per dollar and in dollars per franc.

By Mr. Holmes:

Q. What column is that? A. Columns 20 and 21, and the amount is in 22. Then in Column 19, we show the dates that the boat line bills us for freight charges, and in Columns 20 and 21, we show the rate of exchange in New York on that
834 date; Column 25 expressed the francs per dollar, and Column 26 dollars per franc. Substitute back there in the first one, Column 24, shows the date which the French Line actually received payment for the transportation charges, and Columns 25 and 26 show the rate of exchange in New York on those dates, expressed in francs per dollar, Column 25, and dollars per franc, Column 26.

By Examiner Manghum:

Q. With the bills of lading, you had also some freight receipts? Was the freight money on

these other shipments paid by the American Tobacco Company? A. The freight on all of these shipments was paid by the American Tobacco Company. 835

Q. On all? A. Yes, all on this exhibit.

Q. The sales were made C. O. D. port of origin? A. Port of origin—F. O. B. port of origin.

Q. F. O. B. port of origin? A. Yes, sir; that means to include the transportation charges from the mill to on board the vessel.

Q. Was there any adjustment of freight as between the seller and the purchaser? A. The ocean freight? 836

Q. Yes. A. No, those freight charges were stood by us entirely, no adjustment between the American Tobacco Company and either of the three shippers.

Q. What effect did the payment of freight charges by your company on the basis of 5 francs, 18, to the dollar and the payment of freight charges by other companies on the basis of the current value of francs in France, have upon the American Tobacco Company? A. Showed that we paid all the way from one and one-half to four times the amount of freight charges that our competitors did on the same commodities for the same service. 837

Examiner Manghum: That is all.

Mr. Nolan: Just one question.

By Mr. Nolan:

Q. The French Line billed you in each one of the instances shown on Exhibit A, annexed to

838 *Defendant's Exhibit C.*

your complaint, in American dollars, and you paid in American dollars? A. Yes, sir.

Mr. Nolan: That is all.

Examiner Manghum: Any further witnesses?

Mr. Holmes. I just want to consult.

Mr. Nolan: Just one more question.

By Mr. Nolan:

839 Q. In each case, Mr. Lucas, the bill of lading contained the freight rate in dollars and not in francs, did it not? A. As far as I know on the copies I have seen, that is true.

Mr. Nolan: That is all.

Mr. Holmes: Mr. Examiner, that is our case, except as I stated before, if anything comes up when I get this record that I find I have not proved that I thought I had proved, I will ask to have a motion entertained to reopen.

840 Mr. Nolan: Do you close your case for the present?

Mr. Holmes: Yes, sir.

Mr. Nolan: Then, Mr. Examiner, I move to dismiss the complaint, upon the ground that the complainant has failed to make out a cause of action, showing on the part of the respondent any violation of the terms of the Shipping Board Act, and because the complainant has failed to show any discrimination—any unfair discrimination, or any arbitrary action on the

part of the respondent. The record that has been offered here by the complainant, shows that they were given exactly the same opportunity that every other shipper was given. They had a choice of two things. They could pay at destination, and have the advantage of having their money in their pocket until their goods got here, and if so, they have to pay a penalty for it, or they had the option the same as other shippers had, of paying the 842
freight in advance at the minimum rate. Discrimination means—unfair discrimination means that an advantage is taken of a person. No advantage was taken here. They were given a reasonable opportunity. They could do one of two things, and if they elected to wait until their goods were here, they cannot successfully or should not be allowed to successfully claim it was discrimination. Condition existing at that time should be borne in mind. A shipper who elected to pay at destination was in 843
this position, that if the vessel was lost the shipper had saved his freight, and the steamship company was out the earned freight. The shipper who paid in advance was out his freight money if the ship was lost, and the steamship company was that much ahead. Now, that is the exact situation, and I feel that on the record here which they have produced themselves, showing that numerous other shippers paid on the dollar plan, five francs to

844 *Defendant's Exhibit C.*

the dollar, while other were foresighted enough to pay on the franc basis by paying in advance, I think that record is sufficient to condemn their case.

Examiner Manghum: Under the proceedings before the Board, I cannot entertain your motion. The case will be held open, subject to the taking of further testimony at a date to be hereafter determined.

Mr. Nolan: Will a motion be entertained
845 after all the record is in, or does the Board render its opinion without—

Examiner Manghum: That goes to the merits of the case, and the Board will decide that and put out, as I say, first an Examiner's report, to which both parties will have the right to except, and based upon those exceptions, a reconsideration of the case; then the Board will put out its final report. However, at the conclusion of the further testimony, briefs may be filed on both sides on questions of law.
846 The time will be fixed, which is generally 30, 20 and 15 days. So we will adjourn.

(Whereupon, the hearing was adjourned subject to the taking of further testimony at a date to be hereafter determined.)

Defendant's Exhibit C. 847

BEFORE THE UNITED STATES SHIPPING BOARD.

AMERICAN TOBACCO CO. INC., Complainant, against COMPAGNIE GENERALE TRANSATLANTIQUE, Respondent.	Docket No. 13

848

New York, May 17, 1922. 10:30 a. m.

Before:

H. E. MANGHUM,
Chief Examiner.

APPEARANCES:

JONATHAN H. HOLMES, Esq., Attorney for Complainant, and

GEO. C. LUCAS, Esq., Asst. Traffic Manager, 111 Fifth Ave., for the Complainant. 849

JOSEPH P. NOLAN, ESQ., 25 Broad Street, Attorney for Respondent.

PROCEEDINGS.

Examiner Manghum: This is a continuation of the hearing in Docket No. 13, before the United States Shipping Board, American Tobacco Co., vs. Compagnie Generale Transatlantique.

850 *Defendant's Exhibit C.*

LENOX L. ASHMEAD, a witness called on behalf of the complainant, having been first duly sworn by the examiner, testified as follows:

Direct Examination by Mr. Holmes:

Q. Mr. Ashmead, where do you live? A. 1 Lawrence Street, Yonkers, N. Y.

Q. What is your occupation? A. Assistant Manager of the Insurance Department.

851 Q. How long have you been so employed?

By Mr. Nolan:

Q. What company? A. American Tobacco Company.

By Mr. Holmes:

Q. How long have you been so employed? A. Ten years.

Q. Were you employed in that capacity from
852 April 1919 to January 1921 inclusive? A. I was.

Q. Do you have charge of placing marine insurance and the like? A. I do.

Q. And you did during that period? A. I did.

Q. Do you know about these shipments of cigarette paper in books and cigarette paper in bulk that is the subject of this suit?

(No answer.)

Q. You know that this suit is over the matter of freight on a shipment of cigarette paper in bulk or in books? A. Yes, sir.

Defendant's Exhibit C.

853

Q. Did you place insurance on that shipment of cigarette paper? A. I did.

Q. When I say cigarette paper, I mean in books or whatever it was? A. Yes, sir.

Q. Have you the policies that covered that? A. I have.

Q. Will you please produce them?

(Witness produces same.)

Q. Two policies? A. Two policies.

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Q. This one (indicating) covering part of the period and the other one the remaining part of the period? A. One covered up to August 17, 1920. The other from August 17, 1920, on.

Q. Do these policies show the rate on the face? A. One does and one does not.

Q. As to the one which does not, do you know what the rate was? A. I do.

Q. How much was it? A. Twenty-five cents cigarette paper and seventy-five cents on cigarette books.

Q. When you quote twenty-five cents and seventy-five cents, that is the rate on how much money? A. One hundred dollars.

855

Q. And on the other policy, the rate is on the face of the policy, is that right? A. Yes.

Q. Was the rate the same for insuring prepaid freight? A. It is.

Q. Does it indicate on these policies that you can insure the prepayment of freight for the same rate that you can insure against loss by fire, or whatever it was? A. Yes, it does.

Q. What do these two insurance policies cover

856 *Defendant's Exhibit C.*

by way of risk or hazard? A. All the perils of the sea.

Mr. Holmes: I offer these two insurance policies in evidence.

Mr. Nolan: I do not see how they are material in any way.

Mr. Holmes: Only this is a question that was raised the other day by exercising this option, so-called, which we do not admit to, I am using the words of Mr. Nolan, that he said that payment on the other side was in a nature of an option, or payment here was in the nature of an option, and if we paid here in dollars and paid two or three times too much as other people paid on the other side, that there was something to offset that, and we knew that by payment on the other side, a party paying on the other side lost the freight money if the ship sunk. Now to show exactly what that was worth and in the interest of entire accuracy, it was computed on the rate of exchange in France at the time of delivery. I put on this witness to show how much the benefit was to pay on this side as distinguished from paying on the other side on the basis of that argument. That is not very material, but still on account of that argument raised at the last hearing, and in the interest of accuracy in deducting from the claim, the amount of freight premium it was based on the first payment and I have produced this witness accordingly.

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858

Defendant's Exhibit C. 859

By Mr. Nolan:

Q. Mr. Ashmead, you say this first policy, dated 1913, does not show the rate, is that correct? A. Yes, sir.

Q. It was a fixed rate, you say? A. Yes, twenty-five cents on paper and seventy-five cents on books.

Q. That was established of course prior to the war? A. Yes.

Q. And then after the war started, there was 860
a change in that rate, wasn't there? A. Not on marine insurance.

Q. Did it cover any war risk? A. On the import of the paper, there was a clause in the policy, but on cigarette books, they were insured on the other side under this policy.

Mr. Holmes: I object to that, because this was all after the war.

Mr. Nolan: I move that the words "they were insured on the other side" be stricken out because the witness does not know 861
that.

Mr. Holmes: I do not know whether it is material not because this was all after the war. The war had ended at the time this policy was made, perhaps not at the time it was made, but at the time the risk was incurred.

Mr. Nolan: The courts have already taken judicial notice Mr. Holmes, and I presume that this Board will do the same, that war conditions did continue even after the signing of the Armistice.

862 *Defendant's Exhibit C.*

Examiner Manghum: Was this policy in effect during the time the shipments were made?

A. Yes, this policy was in effect during the first time and one part after this time.

Mr. Nolan: But the war did not enter into it. The Shipping Board is particular as to that.

863 Examiner Manghum: I think this should go as to the nature of the policy.

Mr. Nolan: Then there was an additional charge for war risk?

A. Yes, sir.

Q. So that a fixed charge was made, did it vary from time to time? A. It varied from time to time.

Q. Did you advise the French Line that you had insured? A. I could not answer that.

Q. You were in charge of the insurance, weren't you? A. No.

864 Q. Did you advise the French Line that you had insured this? A. No.

Q. I notice in the policy issued February 1, 1913, that the loss is payable according to pounds, according to exchange, is that correct? A. That is correct.

Q. And on the policy for the latter period, August, 1920, to the end of the period in suit, is payable in dollars? A. That is right.

Q. Did you ever have anything to do with the shipment of these tobacco papers, except in connection with the insurance? A. That is all.

Defendant's Exhibit C.

Q. You never called at the French Line to inquire from Mr. Cauchois, or any other man there as to any of the shipments going forward? A. No, sir.

Mr. Holmes: I object to that as incompetent and having nothing to do with the issues involved.

Examiner Manghum: Are you through?

Mr. Nolan: Yes.

Examiner Manghum: Just a minute Mr. Nolan, is the premium on the rate payable on these policies, based in any way on the freight—the amount of the freight rate?

A. No.

Mr. Holmes: Mr. Nolan, you stated at the close of the hearing the other day that because a shipper paid his freight in advance he lost the prepaid freight in case the ship was sunk, whereas the shipper who paid on this side did not have to pay it in case the ship sunk; that that fact was given some kind of consideration or offsetting the fact to offset the two plans—whatever words you want to use—the fact that a shipper paying on this side pays more freight in American dollars than a shipper paying on the other side, and so I put on this witness to show that that is negligible, that that shipment, if there is anything to it in theory, in fact it is negligible.

Mr. Nolan: I object to the acceptance of those policies, Mr. Manghum.

868 *Defendant's Exhibit C.*

Examiner Manghum: We will accept them.

(Received by the stenographer and marked Ashmead Exhibits 1 and 2 respectively of this date.)

By Mr. Nolan:

Q. Did you ever make any claim on these policies? A. Yes, there have been claims made.

Q. And collected? A. Oh, yes, and collected.

869 Q. You could give us readily a statement of those, couldn't you? A. I suppose it could be gotten up.

Q. All right, I wish you would make up a statement of the claims presented and all those paid.

Mr. Holmes: I object to that, what possible materiality can it have here?

Mr. Nolan: They are claiming all these lots and now we find we are troubled throughout. In the first place they sit tight and paid the freight when the goods arrived in New York and then to be dead sure that they never had to pay the freight premiums or lose any money on the goods, they insured the goods in advance. If they collected any money on this, I think it is material and might possibly mean a rebate to us.

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Mr. Holmes: We did not insure the prepaid freight. We could have placed insurance for the prepaid freight at the

premiums stated but that is all I am saying.

Mr. Nolan: You could have insured it by paying an additional premium and collected if there was a loss.

By Mr. Nolan:

Q. Mr. Ashmead, the terms of these policies permitted the American shipper, if he desired to prepay the freight, to also insure the freight? A. Yes, sir.

Q. And if you want to insure the amount of the prepaid freight, you would have to pay an additional premium, wouldn't you? A. Yes, sir.

Q. So that by not prepaying the freight, and not insuring the prepaid freight, you did save money in insurance? A. Yes.

Mr. Holmes: I object to that "save money in insurance."

Examiner Manghum: That is a conclusion.

Mr. Nolan: It is not a conclusion. This is a witness who knows the facts and was in charge of the business.

Mr. Holmes: Of course it is a conclusion. He says we did not save as much money as if we had done something else, or that we have saved it here or that we have saved it there, I think it is a conclusion.

By Mr. Holmes:

Q. About the war insurance, was the rate after the Armistice, going up or going down? A. Going down.

874 *Defendant's Exhibit C.*

Q. Did it go down rapidly? A. It did.

Q. Is there any war insurance now? A. There is not.

Q. About how long did it last, do you know, after the Armistice? A. I could not answer that. It is on the policies.

Q. Do you know how much it was at the time of the Armistice? A. The rate you mean?

Q. Yes? A. Five cents.

Q. Per one hundred dollars? A. Yes, that is
875 right.

Q. Was that five cents during the war? Just before the Armistice, or after the war, after the Armistice? A. After the Armistice.

Q. Five cents? A. Five cents.

Q. Per one hundred dollars? A. Yes.

Q. And after that it went down? A. No, it ended up with five cents—the last rate.

By Mr. Nolan:

Q. You haven't got in your mind now the dif-
876 ferent rates from the Armistice down to the end of the war risk insurance? A. No.

By Mr. Holmes:

Q. Do you know what it was when the war ended? A. No, I do not.

(Witness excused.)

Defendant's Exhibit C. 877

GEORGE C. LUCAS, recalled for further cross examination by Mr. Nolan, after being duly sworn by Examiner, testified as follows:

Cross Examination by Mr. Nolan (Resumed):

Q. Mr. Lucas, during the period involved in suit, whose duty was it to follow up the steamship company, to find about the movements of these various cargoes consigned to the United States? A. After the shipment had been de- 878
livered to the steamship companies, you mean?

Q. I mean whose duty was it in New York to inquire from the steamship company asking as to the speeding up of any shipments that were expected by the American Tobacco Company? A. We would only have information of the shipments when we received advice that they had been loaded on the vessel and then the import department would keep in touch with those boats as to their arrival so that we could take delivery of the goods.

Q. You had a standing contract with certain 879
people in France for specific shipments at fixed periods, didn't you? A. At fixed periods, or continuous shipments, yes, sir.

Q. Whose business would it be to go to the steamship company and ask the steamship company to cable to the other side and ask about the movement of such cargoes or such shipments or about speeding up their delivery? A. I doubt if we would have goods at that time at all, Mr. Nolan. We don't even at the present time.

880 *Defendant's Exhibit C.*

Q. Would any such situation be in the hands of the import department? A. If there was, it would be.

Q. Who was at the head of the import department at that time? A. Mr. Lang, was the supervisor.

Q. Is he still with the company? A. No.

Q. Do you know where he is now? A. No, I do not.

Q. Who was his assistant at the time? A. Mr.
881 Millington.

Q. Where is Mr. Millington? A. He is in the City.

Q. With your company? A. No.

Q. Couldn't you tell me where he is? A. Yes, with some other company in the town—I forget the name.

Q. Can you find out? A. Yes, Mr. Millington, is here today.

Q. In this room? A. Yes, sir.

Q. But you do not know what company he is with? A. No, I do not know the name of the
882 company.

Q. What did you have to do in connection with these shipments of cigarette papers in books, prior to the first date mentioned in the complaint? A. Nothing whatever.

Q. What did you have to do with them, after the first date mentioned in the complaint? A. I had nothing whatever to do with any of these shipments until we began our correspondence with the French Line with regard to the rates.

Q. Do you know the practice of the American Tobacco Company in the receipt of bills of the

Defendant's Exhibit C.

883

American Steamship Company? A. I know the practice at the present time.

Q. What is the practice at the present time? A. All freight bills are approved by my department.

Q. By your department? A. Yes.

Q. When did that commence? A. About January, 1921.

Q. Do you know what was the practice prior to that? A. They were not approved by the Traffic Department prior to that time.

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Q. They were not? A. No, sir.

Q. Do you know what the practice was?

Mr. Holmes: I object to that as immaterial.

Mr. Nolan: This, Mr. Manghum, I think I can show you later on in the hearing is very material and I ask leave to have it go in now with the understanding that I will connect it all up later.

Mr. Manghum: Under that condition, you may put it in.

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Mr. Holmes: Exception.

A. I do not know what the detailed practice was.

Q. Do you know what department handled the bills for freight under these circumstances? A. The import department and accounting department.

Q. Import and accounting? A. Accounting department, if I am not mistaken.

Q. You personally had nothing to do with that? A. No, sir.

(Witness excused.)

886 *Defendant's Exhibit C.*

GEORGE S. MILLINGTON, a witness called on behalf of the respondent, being duly sworn by the examiner, testified as follows:

Direct Examination by Mr. Nolan:

Q. What is your full name and address? A. George S. Millington, 47 Liberty Street, Ridgewood, N. J.

887 Q. Where are you employed now, Mr. Millington? A. The Bradford Company, 200 Fifth Avenue.

Q. On April 7, 1919, were you connected with the American Tobacco Company? A. November 1, 1920.

Q. Prior to April 7, 1919, with what company were you connected? A. The American Tobacco Company.

Q. In what capacity? A. As manager of the export and import department.

888 Q. Did you have anything to do with freight bills received from the French Line prior to April 7, 1919, covering freight charges on shipments moving forward from France to the United States? A. I did.

Q. I show you blank form and ask you if that is form of freight bill which you usually received? A. Yes, sir.

Mr. Nolan: I ask that it be marked in evidence.

(Received by stenographer and marked Respondent's Exhibit 1 of this date.)

Defendant's Exhibit C.

889

Q. When you received a freight bill from the French Line on these shipments prior to April 7, 1919, what did you do with it? A. I had them compared with the freight on the bill of lading and if the freight rate was approximately the same as the previous rates I O. K'd them.

Q. And it passed from your hands with your O. K. to what department? A. The Auditing Department for payment.

Q. Do you know whether or not the auditing department made a habit of counter-checking? 890
A. I do not.

Q. Did you forward them to the auditing department along with the bill of lading? A. No.

Q. Prior to April 7, 1919, the freight bills which you received were made out with so many hundred pounds or tons of cargo at so many francs per ton at the rate of so many francs to the dollar? A. Right.

Q. And the total carried out on it? A. That is right, I am not sure of that date, though.

Q. I take the date from the complaint as the first charge made against the French Line in this 891
litigation, as the first time the $18.00 rate was put into effect, although on the tabulated statement it appears to be May 1, 1919. After May 1, 1919, Mr. Millington, the complaint charges that the French Line billed the American Tobacco Company in dollars and not in francs. Did you receive the new freight bills in dollars? A. Yes, up to November 1, 1920.

Q. What did you do with the new freight bills you had in dollars? A. I approved them.

Q. Did you compare them with the bills of lading? A. Yes.

892 *Defendant's Exhibit C.*

Q. And then passed it on to your auditing department? A. Yes.

Q. How many years would you say prior to the receipt of the first bill of lading with the charge in dollars had the American Tobacco Company been receiving these freight bills with the charge made out in francs and the rate included in dollars? A. Oh, I should say for a period of not more than fifteen years.

Q. Just so that the record may show this situa-
893 tion, I ask you this. You never talked with me about this matter until this morning when Mr. Lucas pointed you out and I talked with you here in this court room? A. No.

By Mr. Holmes:

Q. Have you any freight bills, Mr. Lucas, that were received prior to May 1, 1919? A. I have, sir.

Q. Have you any received since then? A. I have, sir.

894 Q. May I see them, please?

(Hands papers to counsel.)

By Mr. Nolan:

Q. I show you Lucas' exhibit 2, which has previously been marked in evidence, freight bill dated January 21, 1920, in the amount of $423.57. Is that the form in which the bill usually came to you? A. Yes.

Q. And you compared it with the bill of lading before you O. K'd. it? A. Yes.

Q. And figured the number of pounds at the dollar rate on the bill of lading? A. This particular bill was not approved by me.

Q. It was approved by your department, wasn't it? A. Approved by somebody in my department, yes.

Q. Who had authority to approve and pay it? A. Yes.

Q. After these bills started coming in with bills of lading made out in dollars, you received no instructions from anybody in the employ of the American Tobacco Company concerning the freight rates, did you? A. Not that I remember.

Mr. Nolan: That is all.

Cross Examination by Mr. Holmes:

Q. Mr. Millington, do I understand correctly, that prior to April, 1919, the freight bills from the French Line were in Francs and subsequently there was a change and they came in in dollars? A. I do not just remember what date that was. I do know that some of those bills were rendered that way, but as to what date or what year, I could not say.

Q. When the bills were rendered in Francs, did you pay them in francs or dollars? A. Paid them in dollars.

Q. At what rate? A. They were supposed to be paid at the current rate of exchange.

Q. We are talking now of the period prior to April, 1919? A. I do not remember just what date that was, but I recall that some bills were

898 *Defendant's Exhibit C.*

rendered when the rate was more normal at the approximate rate of exchange.

Q. All right. You said here in your testimony that you approved certain bills. When you say that, do you mean that you approved them personally or approved by your department? A. I mean some by me personally and some by others in my department.

Q. What was the general practice? A. For somebody in my department to approve them.

899 Q. Did you often approve them yourself? A. Yes, I did very often.

Q. When I say often—(interrupted) A. I frequently approved them myself.

Q. But I am speaking about a systematic approval? A. No, as a systematic way, no, I did not. Somebody else in my department approved them.

Q. You mean you approved them in an emergency or perhaps in the absence of somebody assigned to that duty? A. Yes, that is it.

900 Mr. Holmes: As Mr. Nolan says he is going to produce a witness here to give some testimony about a publication and I have said that I am going to object to that as being immaterial and not binding on this complainant. Technically I suppose I may assume, I should assume that that evidence should be excluded, as if so I will not need any rebuttal, but as Mr. Millington is here we do not want to take his time too much. In view of the fact that Mr. Nolan has made a statement not on

Defendant's Exhibit C. 901

the record, saying he was going to produce a witness to testify to publication and I said I was going to object to that reserving my objection to that, if I may, I am wondering if I cannot reserve my objections to all that testimony and still with Mr. Millington on the stand here ask him some questions which would be in nature of rebuttal to that class of evidence without asking him to wait until tomorrow.

Examiner Manghum: In other words, in 902
case the ruling is favorable to Mr. Nolan the statements will remain on the records, we will accept the evidence under that condition.

Mr. Holmes: And subject to my rights to object to that.

Mr. Nolan: You want to take him on rebuttal now?

Mr. Holmes: Yes, that is my idea.

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George S. Millington, called in rebuttal by Mr. Holmes, being duly sworn by the examiner, testified as follows:

By Mr. Holmes:

Q. I show you photostatic copies attached to the answer in this matter and ask you when you first saw any copies of such tariffs? A. I have never seen any of these before. This is the first time I have ever seen them.

Q. Who was the—(interrupted)

904 *Defendant's Exhibit C.*

Examiner Manghum: Just a minute. You mean you have never seen a photostatic copy or a printed copy?

A. I have never seen a printed copy or a photostatic copy.

Q. (Mr. Holmes) Who was the individual in the employ of the American Tobacco Company, who in the course of the business of the American Tobacco Company, would have received com-
905 munications in the mail or otherwise from steamship companies relative to rates? A. I would.

Q. Did you ever receive during the period from April, 1919, to January, 1921, inclusive, any notice from the French Line, respondents in this action, to the effect that freight could be prepaid in France in French francs? A. No, sir, that is up to November 1, 1920.

Q. Why do you mention that date? A. Because that is the date I resigned from the American Tobacco Company.

Q. What date? A. November 1, 1920.

906 Q. That was the date of your resignation? A. That is right.

Q. Mr. Millington, you were familiar weren't you after the war, or during the war with elementary facts in regard to foreign exchange? A. Yes.

Q. Did you know along in the early part of 1919, or perhaps in the latter part of 1918, what the trend of foreign exchange was? A. Yes.

Q. What did you know about it? A. I knew that the tendency was to go down and that was approximately towards the latter part of 1918.

Defendant's Exhibit C. 907

Q. You say the tendency was to go down? A. It did go down through a part of that period.

Q. Did it ever occur to you Mr. Millington that possibly as having to do with payment of freight you could take some advantage possibly of this falling rate of exchange of the French Franc? A. Yes.

Q. Did it occur to you? A. Yes, it did.

Q. Well, as a result of that thought, did you do anything? A. I remember in one instance, it was in the latter part of 1918, when it was ap- 908
parent the French exchange was going down, taking this matter up with Mr. J. Michon of the French Line.

Q. Well, will you state what happened and what took place? A. Why, I brought up the question with him, it is a little vague in my mind, but I remember distinctly taking this matter up with him and he said, well, it is immaterial which way you handle this, whether it is under prepaid or collect, or words to that effect.

Q. You relied upon that, did you? A. I did.

Q. Who was Mr. Michon? A. He handled the 909
claims for the French Line.

Q. What is his position? A. In the New York office, I believe, he handled all their claims, he was their claim man.

Cross Examination by Mr. Nolan:

Q. How well do you know Mr. Michon? A. I know him from business contact, that is, from business contact with him.

Q. He settled claims for the company? A. He settled claims for the company.

910 *Defendant's Exhibit C.*

Q. You never engaged any freight with him, did you? A. No.

Q. Who else did you ever see down there about freight matters? A. Frank Choquitt.

Q. Also a freight man, isn't he? A. Yes.

Q. Did you ever see Mr. Choquitt, the head of the freight department? A. I have spoken to him a couple of times.

Q. On those occasions you asked of him to send a cable to the other side about some shipments
911 didn't you? A. I do not recall that.

Q. You would not deny that was so, if he said you had? A. I may possibly have asked him to send a cable in regard to some matters, but just what they were I cannot remember.

Q. That was just on one occasion that you spoke to Michon about this? A. No, I spoke to him several times, but there is only once when I really recall the matter to mind.

Q. He told you it was immaterial whether you prepaid it or not? A. Yes, he answered to that effect.

912 Q. Can you remember the exact words—they are very important, Mr. Millington? A. No, I cannot, I am sorry to say.

Q. How did you happen to raise this point; were you down there suggesting some shortage or something of that sort? A. I do not know how it came up, but the thing that came up at the time was this falling of French exchange.

Q. Did you have it in mind that the American Tobacco Company should wait and pay it at this end because the exchange was falling and you would get that advantage if you prepaid in advance? A. Yes.

913

Q. In other words, you would like to gamble to get advantage of the falling of the exchange rate? A. I thought we were entitled to the benefit of the exchange in this situation.

Q. That is by paying for it in francs from here, you ran the chance of the franc falling still lower and you got that much more benefit. That would be the effect of it, wouldn't it? A. Yes.

Q. Afterwards when you got the first bill, $16, $12, $18, didn't that conversation with Michon occur to you? A. It probably did, but I do not 914
remember just now.

Q. There was quite a big difference with the falling rate of exchange? A. Very much so.

Q. And you didn't go down and speak to Michon about it? A. I may have asked somebody else to go down. There was a certain period during that time when I made a trip to Europe.

Q. Can you tell when it was that you made the trip to Europe? A. March 16, 1920.

Q. Well from April 7, 1919, until March 16, 1920, you were getting shipments every week, freight bills every week, stated in dollars, during 915
that period of six months; do you mean you didn't take Mr. Michon to task about the falling off of the rate? A. I probably did, but I do not recall it, at that particular time. I had not only the import, but the export and I was very busy and I used to leave a good many of these matters to other people.

Q. You wouldn't say positively that you did raise the question at all? A. I positively did. I remember taking it up with him.

Q. Do you remember taking it up with anybody else? A. Not that I recall.

916 *Defendant's Exhibit C.*

Q. Did you take it up in the American Tobacco Company's office with anybody? A. I discussed it with different ones in the department.

Q. Did you go to any of your superiors and say anything about it? A. Not that I remember, no, sir.

Q. And although you were going down to discuss this matter with Michon, it never occurred to you to withhold your O. K. from the freight bills until you thrashed it out with him? A. No,
917 it did not. It may have occurred to me at the time. I do not recall. It probably did occur to me.

By Mr. Holmes:

Q. Mr. Millington, when you say that this gentleman of the French Line told you that it was immaterial, what did you have in mind as the things referred to that were immaterial? A. Well, that the rate would be based according to the exchange.

918 Q. When I asked you the question I assumed that you meant that it would be immaterial whether the freight was prepaid in francs or was collected here? A. Yes.

Q. Was that what you mean? A. Yes.

By Mr. Nolan:

Q. At that time you were being billed by the company in francs, at the time you discussed that? A. Yes.

Mr. Nolan: It probably was at that time, that is all.

Defendant's Exhibit C. 919

By Mr. Holmes:

Q. Do you remember at the present time whether your freight bills were coming in in francs or dollars at the time you had the talk with Mr. Michon? A. I am pretty positive at that time they were coming in in francs. Yes, I can state that they were at that time.

(Witness excused.)

Adjourned to May 18, 1922, at 10:30 a. m. 920

UNITED STATES SHIPPING BOARD,
45 Broadway, New York City.

May 18th, 1922, 10:30 A. M.

BEFORE THE UNITED STATES SHIPPING BOARD.

921

AMERICAN TOBACCO CO. INC.,
Complainant,
against
COMPAGNIE GENERALE TRANSATLANTIQUE,
Respondent.

Before:

HON. H. E. MANGHUM,
Chief Examiner.

922 *Defendant's Exhibit C.*

APPEARANCES:

JONATHAN H. HOLMES, Attorney for Complainant, and George C. Lucas, Assistant Traffic Manager, 111 Fifth Avenue, for the Complainant.

JOSEPH P. NOLAN, 25 Broad Street, Attorney for the Respondent.

923

JEANE A. MICHON, a witness called by the Respondent, having been first duly sworn by the Examiner, testified as follows:

Direct Examination by Mr. Nolan:

Q. Mr. Michon, what is your business? A. Freight forwarder and Customs House Broker.

Q. Are you in business for yourself? A. Yes,

924 sir.

Q. Were you in business for yourself in the latter part of the year 1918? A. No, sir.

Q. By whom were you employed then? A. By Produce & Warrant Company. I do not remember if they are incorporated or not.

Q. Have you ever been employed by the French Line? A. Yes, sir.

Q. Up until what time? A. October, 1917.

Q. From October, 1917, down to the present time you have been employed by the French Line? A. No, sir.

Defendant's Exhibit C.

925 Q. A witness called yesterday in this hearing between the American Tobacco Company and the French Line, testified that some time the latter part of the year 1918, he, representing the American Tobacco Company, conferred with you as to the advisability of paying on freight shipments from France either in advance or at New York. Did you have any such conversation with a Mr. Millington of the American Tobacco Company in the year 1918? A. No, sir.

926 Q. Did you ever at any time give Mr. Millington any advice as to where he should pay his freight on shipments for the American Tobacco Company? A. No, only that if he did pay them in advance it would be to his advantage.

Q. You did have such a talk with him? A. Yes, sir.

Q. Can you fix about when that was? A. It was the latter part of 1920.

Q. You were not employed by the French Line then? A. No, sir.

927 Q. You had no authority from the French Line to talk for them? A. No, sir.

Q. But you told him it would be to his advantage to pay in advance? A. Yes, sir.

Q. While you were employed in the Company did you have any talk whatsoever with Mr. Millington about rates? A. No, sir.

Q. What was your business for the company? A. Claim agent.

Q. You had nothing to do with the fixing of rates? A. I had nothing to do with the fixing of rates.

928 *Defendant's Exhibit C.*

Cross Examination by Mr. Holmes:

Q. When you say that you did not have a conversation with him, you are thinking of a face to face conversation, of his coming to your office and talking to you? A. Face to face conversation in the office.

Q. You had no such conversation? A. No, sir.

Q. You are not thinking of a telephone conversation? A. No, sir, not even a telephone conversation of any rates in question.

929

Q. Did he have occasion to call you up on the telephone? A. During what period?

Q. The latter part of 1918. A. No, sir.

Q. While you were with the French Line? A. I was not with the French Line.

Q. How long were you with the French Line; what date in October did you leave the French Line? A. About the 20th.

Examiner Manghum: What year?

930 A. 1917.

By Mr. Holmes:

Q. During that time you were accustomed to talk over the telephone every day? A. Well, I was accustomed to talk and people would call me up and ask for information, yes.

Q. You do not remember everybody you talked to in October 1918 over the telephone do you? A. I was not there in 1918.

Q. Was it 1917 that you left the employ of the French Line? A. Yes, sir.

Defendant's Exhibit C.

931

Q. When did you first know that there was any advantage to the shipper in paying his freight on the other side? A. According to the tariff that the French Line had.

Q. When was it? A. Well, it is—I do not remember the date.

By Mr. Nolan:

Q. Can you give the year? A. Yes, about 1917.

932

By Mr. Holmes:

Q. At that time, in 1917, it became advantageous to pay on the other side instead of paying here, is that right? A. That I cannot say. I presume according to the tariff.

Q. There was a time when it became advantageous to pay on the other side, instead of paying here on shipments this way, is that correct? A. Well, according to what the tariff said. Of course I do not know anything other than that.

Q. I am thinking particularly about the rate. 933
The rate was such wasn't it at a certain time, that if freight was prepaid in France, that gave the shipper an advantage over the shipper who paid on this side upon delivery of the freight, is that right?

Mr. Nolan: That I object to purely for the reason that this witness as he testified had nothing to do with rates. He was a claim agent.

Examiner Manghum: He testified on direct that he told Mr. Millington.

934 *Defendant's Exhibit C.*

Mr. Nolan: He says in 1920.

Examiner Manghum: That it would be to his advantage to prepay his freight in advance.

Mr. Nolan: That was in 1920 when Millington called him up to ask him about it. That is outside the period of litigation when this man was not employed by us.

Examiner Manghum: Read the question.

(Question read by reporter.)

935 He can testify if he knows it.

Mr. Nolan: During the period of his employment. He is not an expert on rates. He does not know any of the reasons of changing rates. What does he know except that it was a published tariff in part of his employment?

Examiner Manghum: What period do you refer to, what time.

Mr. Holmes: He testified he told Mr. Millington in 1920 that he would have an advantage if he paid on the other side.

936 Now, when did he first get that information which in 1920 he conveyed to Mr. Millington. That is proper cross examination.

Mr. Nolan: For the purpose of the record I will take an exception.

By Mr. Holmes:

Q. You have testified that in 1920, the latter part of 1920, you told Mr. Millington that it would be some advantage to the shipper if the

freight was prepaid in France, that is correct isn't it, you have so testified? A. Mr. Millington asked me if there is an advantage in paying freight on the other side or paying it at destination, and I told him it would be more advantageous to them if they paid on the other side, to my knowledge.

Q. What did you tell him that advantage would be? A. He simply asked me if there would be an advantage of paying the freight on the other side, that is all. 938

Q. That is all you told him that it would be? A. That it would be, yes.

Q. When did you first get that information, when did you first know that there would be an advantage? A. When I saw the tariff; that is all.

Q. How long before the date on which you had this conversation with Mr. Millington, did you know it would be advantageous to make this prepayment? A. Prior to the time he called me up —prior to the time I left the French Line.

Q. That is as long ago as 1917? A. The latter 939 part of 1917.

Q. Now, this conversation with Mr. Millington, which you testified about was when you were in the same room together or was it a telephone conversation? A. Telephone.

Q. Did you have any other conversation with Mr. Millington on the telephone? A. No, sir.

Q. During the time that you were with the French Line, were you answering the telephone, taking telephone calls frequently? A. Yes, sir.

Q. And you could not testify could you now,

940 *Defendant's Exhibit C.*

everybody that you were talking to on the telephone? A. Well, no, I could not.

Q. So you could not say, could you definitely, that you never had talked to Mr. Millington on the telephone? A. I have talked with Mr. Millington on the telephone, but never on that question.

By Mr. Nolan:

941 Q. At the time he asked you would there be an advantage in 1920, was there any other conversation between you and him over the telephone? A. That I asked him and he asked me—yes.

Q. What was it? A. When he 'phoned me and asked me what was the advantage in the rates. I asked him what was in the wind, and he told me there was going to be some kind of litigation or suit coming up, and I asked him if he was going to testify and he said he would.

Q. These tariff sheets, when you were in the employ of the company, were not in your charge,
942 were they? A. No, sir.

Q. In whose charge were they? A. In Mr. Cauchois'.

Q. And was it part of your business to know about these tariff sheets or did you apply to him? A. No, sir, I had to apply to him for the tariff before I could quote any rates.

Q. And, therefore, if anybody asked you for information that not being part of your business, you would go to him for the rate? A. Absolutely.

Q. And in that way you knew about the tariff

sheet and knew about the change? A. Absolutely. 943

Mr. Nolan: That is all.

By Mr. Holmes:

Q. You say the rate sheets were not in your charge. How do you feel sure that you can remember that you never did talk to Mr. Millington about this matter over the telephone in your different conversations over the telephone with him. A. Because it was a question of rates and 944
tariff, and I would first get my tariff from Mr. Cauchois, and then tell him what the tariff said. I would not quote any rates to any one unless I had the tariff or quotation given to me by my superior.

Q. You know Mr. Millington pretty well, don't you? A. I do, yes, sir.

Q. You had a number of conversations with him about other matters? A. Claim matters, yes, sir.

Q. Well, was there never anything talked about in these telephone conversations about claim mat- 945
ters other than claim matters? A. No, sir—only claim matters—shortages and damages. That is all.

Q. Well, these rate matters were in charge of some one else—you knew what the rates were? A. I didn't know all the rates, no, sir. I would have to ask.

By Mr. Nolan:

Q. When you told Mr. Millington in 1920 there would be an advantage in paying on the other

946 *Defendant's Exhibit C.*

side that is of course because you assumed the rates were still in force when you worked for the French Line? A. I told him that presumably that the rates were the same, and he asked me if it was advantageous in paying on the other side.

Q. It was common knowledge among shippers that it was advantageous to pay on the other side? A. Absolutely.

Mr. Holmes: I move to strike that out as a conclusion.

947 Mr. Nolan: He is a shipping man and it is his business to know whether it is common knowledge or not.

Examiner Manghum: Read that question again, please.

(Question read.)

Mr. Nolan: Here is a man who is in the shipping and forwarding business. It is his business to know that the same as all forwarders; and also the question is a proper one according to the rules of evidence. The witness may be asked what is

948 common knowledge and what is the custom and similar questions.

Examiner Manghum: This witness testified he did not know anything about rates and tariffs.

Mr. Nolan: No, but he has testified as to the question of advantage, that it was an advantage to pay on the other side, and he has testified to that as a shipping man.

Mr. Holmes: He has testified he himself would not know anything about these rates, unless he asked somebody and yet

Defendant's Exhibit C.

he says the shipper has common knowledge. 949

Mr. Nolan: He has testified as to the specific rate, not as to the place of payment.

Examiner Manghum: He is a claim man, dealing with loss and damage cases.

Mr. Nolan: I ask you, sir, what man would be expected to know the specific rate on any commodity. There are over 500 commodities. What man could testify without taking the rate sheet and finding it out. 950

Examiner Manghum: The question will be stricken out.

Mr. Nolan: Exception.

Harold A. Nolan, a witness called by the respondent, having been first duly sworn by the Examiner, testified as follows: 951

Direct Examination by Mr. Nolan:

Q. What is your name and address? A. Harold A. Nolan, Seaford, L. I.

Q. With what company are you employed, Mr. Nolan? A. Compagnie Generale Transatlantique.

Q. How long have you been employed by the Compagnie Generale Transatlantique? A. Five and one-half years.

Q. Continuously? A. Yes, sir.

Q. Has all your time been spent in the employ of the company in New York? A. No, sir,

952 *Defendant's Exhibit C.*

part of the time I spent in Havre and in Paris also.

Q. What period did you spend in France in the employ of the company? A. From February, 1920, until March, 1921.

Q. You went over to France with specific instructions, did you? A. Yes, sir.

Q. What was the business in which you were employed in France? A. To obtain a general knowledge of the steamship business in France.

953 Q. Then you were to study the business of the company to fit you for the New York office as well as to do business there? A. Yes, sir.

Q. When you arrived there did you work in the freight department at Havre? A. I worked in the passenger department for one month, and then in March I went in the freight department until September.

Q. While you were employed in the freight department of the company in France, did they have a printed rate sheet? A. Yes, sir.

Q. I show you a paper and ask you whether or

954 not that is a copy of the printed rate sheet that was in force while you were in France? A. That is one that was in force June 16, 1920.

Q. I show you another one and ask you what one that is? A. That is the tariff dated July 1st, 1919, which was in force when I went in with the freight department in Havre.

Mr. Nolan: I offer the latter document in evidence.

(Marked Nolan Exhibit 1 of this date.)

Q. Now, I hand you the tariff sheet which you testified first, dated June 16, 1920, and ask you

 955

if that was in force also at the time you were in France? A. Yes, sir.

Mr. Nolan: I offer that in evidence.
(Marked Nolan Exhibit 2 of this date.)

Q. Were those tariff sheets or copies of those which you have just identified, posted up in the company's office in France?

Mr. Holmes: I object to that as not binding on this complainant, immaterial, irrelevant and incompetent, no matter 956
whether posted up in France or any other office. I would like to make the objection a little more formal. I assume that this is brought in on the theory that posting amounts to some notice to this complainant, on the theory it is bound by the notice, and that that makes some kind of an implied contract. My objection is first that even if we had entered into a contract of any sort, but were ignorant of a discriminatory practice against us, the contract would not be binding, but particularly 957
that there would be no contract or implied contract spelled out without notice having been brought home to this complainant that posting in the Paris office does not constitute such notice, and I desire to emphasize particularly that we cannot be charged with notice in the absence of a statute which provides for notice, and that further provides that posting or publication in any certain way shall constitute constructive notice. In the absence of some law of that sort that the posting of

958 *Defendant's Exhibit C.*

any notice is not binding on the complainant, it is immaterial, irrelevant and incompetent.

Mr. Nolan: I do not think that needs any argument, sir.

Examiner Manghum: Objection overruled.

Mr. Holmes: Exception.

A. No, these rate sheets were not posted. These tariffs were given to the forwarding com-
959 panies, express companies and shippers upon request.

Mr. Holmes: Objection on the ground it is immaterial, irrelevant and incompetent, and not binding on the complainant.

Examiner Manghum: Objection overruled.

Mr. Holmes: Exception.

By Mr. Nolan:

Q. You know of your own personal knowledge
960 Mr. Nolan that those documents were handed out to the forwarding companies, transfer agents, express companies and shippers upon request? A. Yes, sir.

Mr. Holmes: I object to that as too general. It does not show that he handed them out or to whom they were handed.

Mr. Nolan: That is a matter of cross examination. He says he knows of his own personal knowledge.

Mr. Holmes: That is not binding upon this complainant that they handed it to somebody in France if they asked for it.

Defendant's Exhibit C. 961

Examiner Manghum: He testified that he knew it is the custom of the company. Objection overruled.

Mr. Holmes: Exception.

Q. As part of your duties can you say, Mr. Nolan, that you saw these tariff sheets handed out to the various concerns? A. Yes, sir.

Q. Frequently the bills of lading were written up by the express companies and the forwarding agents themselves and then brought in to the 962
Transatlantique Company? A. Yes.

Q. And the rates were often written in by these forwarding agents and express companies on the bills of lading before they brought them in here? A. Yes, sir.

Q. That was frequent practice? A. Frequent.

Mr. Holmes: Objection as not binding on the complainant.

Examiner Manghum: As to the general practice.

Mr. Holmes: Yes. 963

Examiner Manghum: Yes.

Mr. Holmes: Note my exception as not binding upon the complainant.

Q. And the rates so written on the bill of lading and handed in to the office of the company where you were employed were the rates as shown in these tariff sheets? A. Well, they were checked up with these tariff sheets.

Q. It is part of your duty to check it up and see that the rates which the forwarding agents and express companies had written on the bills

964 *Defendant's Exhibit C.*

of lading did correspond with these tariffs? A. Yes, sir.

Mr. Nolan: That is all.

Cross Examination by Mr. Holmes:

Q. Can you name now any of the shippers who made request for and received these tariffs? A. No, sir.

965 Q. Disregarding any question of the difference in exchange resulting in a difference of charge, can you testify now that all shippers were charged the same rate upon the same commodity. A. Every bill of lading that I checked I checked the rates with the tariff. I suppose there could have been a contract

By Mr. Nolan:

Q. Well, of your own knowledge. A. No, not of my own knowledge. All the rates were based on that tariff.

966

By Mr. Holmes:

Q. We will put it in this way. In checking these bills of lading, did you invariably find that the rate agreed with these schedules as the rate is set forth here in francs.

Mr. Nolan: He said yes. He said the same as that tariff—everything.

Mr. Holmes: I do not know what he said.

Mr. Nolan: He stated on the tariff—

967

Examiner Manghum: Let him answer the question. The reporter will please read the question.

(Question read.)

A. You mean with the rates the shippers put on bills of lading?

Q. I mean the rate that was charged to the shipper—did it always agree with the tariff? A. To my knowledge, yes.

Q. When you say to your knowledge, you mean you know that they did, is that right? A. I know 968
that they did to my knowledge, yes, sir.

Q. What do you mean when you say there may have been a contract? A. Well, there could have been a contract, but to my knowledge.

Examiner Manghum: I do not think that is proper. He testified he did not know whether there was a contract.

Q. Let me ask this question if I may. Do you know whether all the charges to shippers were submitted to you for verification and comparison with these tariff schedules? A. Part of them. I 969
do not do all the work. There were four clerks in that particular department and I did my share.

By Mr. Nolan:

Q. Just one question. As between you and the four clerks, special bills of lading were not picked up and handed to you; you took them haphazard as they came in and the procedure was practically the same for all four of you? A. Yes.

(Witness excused.)

970 *Defendant's Exhibit C.*

Oscar R. Cauchois, a witness called by the respondent, having been first duly sworn by the Examiner, testified as follows:

Direct Examination by Mr. Nolan:

Q. Your name and address? A. Oscar R. Cauchois, 19 State Street, New York.

Q. With what company are you connected, Mr. Cauchois? A. The Compagnie Generale Transatlantique.

971 Q. How long have you been connected with that Company? A. Pretty nearly 47 years.

Q. You have been in charge of the freight department in the New York office during the period in suit? A. What period?

Q. That is from May 1st, 1918, to 1920? A. Yes. I am the Director General of Traffic, as well as the acting representative in general.

Q. Briefly, you were in entire charge of the business in the United States? A. Yes. I am still.

Q. You were familiar with conditions which
972 existed in France during the years 1916, 1917 and 1918? A. Conditions as to what?

Q. Financial conditions, war conditions and commercial conditions? A. Yes.

Q. The French Line operated a great many ships during the war did it not? A. Well, not only their own fleet of 100 steamers; they had about 60 in the tropics.

Q. During the war time period particularly, taking from January, 1916 down to the Armistice, did the French Line suffer a loss of ships on the trips from France to the United States?

Mr. Holmes: That is objected to.

Defendant's Exhibit C. 973

A. Between those periods I should imagine we lost of our own ships that we were operating something like 70 or 80 ships.

Mr. Holmes: I move to strike that out.

Examiner Manghum: Whether they operated at a profit or loss would have some bearing as to the rate that was made effective by the company. Objection overruled.

Exception.

974

Q. I hand you a typewritten list showing the names of ships and dates, and ask you what that list represents? A. It shows four of these ships as having been owned by the Company and the balance under charter, time charter, all of which were lost or sunk by the submarines.

Mr. Holmes: May I have the same objection to all of this?

Examiner Manghum: Yes.

Mr. Holmes: Exception.

Mr. Manghum: Exception allowed.

975

A. (Continuing) This only represents part of the boats of the company. These are only those referring particularly to the heavy freight.

Q. The ships shown on that list were lost between Havre and New York? A. Or New York and Havre.

Q. And were there other ships that do not appear on that list? A. Oh, yes, probably fully as many as that.

Q. On other lines? A. Some on the New York lines, some on the West Indian Line and some on the South American line and some in the Canadian service.

976 *Defendant's Exhibit C.*

Q. Would you say that the company lost over fifty ships? A. Oh, yes, over fifty ships; that is not all of their own. They lost probably about fifty ships; they lost probably fifty others with their freights and their cargoes.

Q. Those ships that were not owned by the company but which were lost were ships under time charter, and the expense of the running of them was the company's and the loss of their freights was the company's? A. Under the time
977 charter the expense of running the ship exclusive of coal and water are at the expense of the ship owner, but we had an inherent interest in it as we had expended the cost of operation, that is as far as coal and docks and lighting is concerned of the charter up to the time she was lost. We could have taken them in ballast, as many of them we did, and all that would go in to the date she was lost and with no freights on your charter an enormous loss would result to us.

Q. Were you familiar, Mr. Cauchois, with the war risk and marine insurance conditions that
978 prevailed? A. Perfectly.

Q. During the period from 1916 on? A. Perfectly.

Q. How did they compare in regard to times, the rate of marine insurance?

Mr. Holmes: Just a moment. Does my same objection hold to this line of testimony. It seems to me about the same thing. I note an objection.

Mr. Nolan: My understanding was you objected to testimony regarding the financial and operating conditions of the company, the commercial conditions.

Defendant's Exhibit C.

Mr. Holmes: I objected to the conditions or transactions of the company that took place before this period, and the ships that they lost, and what they did, and now they have gone on the subject of insurance, and I object to that as being immaterial.

Examiner Manghum: Objection overruled.

Mr. Holmes: Exception.

Examiner Manghum: Exception allowed.

Q. How did they compare? A. Well, the marine risk practically doubled during the period covered by those dates, the war period, and the war risk, of course, did not exist before the war. During the war it went as high as fourteen per cent, anywhere from one-quarter to fourteen per cent.

Q. And it varied from time to time? A. Oh, yes, according to the number of sinkings and the activity of the submarines. It varied daily. One never knew where they stood.

Q. They applied to ships coming from France to the United States? A. Any ship afloat on the North Atlantic, and you could not provide a rate for it. You had to wait until the moment of sailing. You could not get any rate twenty-four hours ahead, and there were times you could not get the insurance at all and you had to wait, and then you got it it would be as high as fourteen per cent.

Q. During the period from July 1st, 1919 until some time in the year 1920 did the Compagnie Generale Transatlantique establish a different

982 *Defendant's Exhibit C.*

rate for payment of freights from France to the United States where they were paid at destination, as distinguished from payment in advance? A. Yes.

Q. I show you a document dated July 1st, 1919, which has been marked Exhibit 1 in this cause? A. Yes.

Q. What was that, Mr. Cauchois? A. That was one of the official tariffs of the company published for westbound freights.

983 Mr. Holmes: I object to the word "published."

A. Issued by the company. Does that suit you. The Company's name is there and the date.

Mr. Holmes: I do not object to it being one of the tariffs, but I do object to the word "published."

A. It was a tariff of the company in existence all that time in vigor until revoked or repealed.

Q. I show you a second document dated June 16, 1920, and ask you what that was? A. Yes, a tariff.

984

Q. Can you, from your knowledge of the company's business, Mr. Cauchois, tell us whether or not these tariffs were enforced in accordance with their terms as against all shippers? A. Oh, absolutely, absolutely. There was no variation at all. That is, the conditions in these tariffs were applied specifically to each and every shipment that was made from France.

Q. Were you familiar with the reasons for the provision in these tariffs providing that where payment was made at destination the rate of francs should be figured five francs to the dollar.

Will you answer that question yes or no? A. I was. 985

Q. Will you please tell the court, Mr. Cauchois, the reasons upon which the payment of freight at destination was based on five francs to the dollar, as against the current rate? A. Well the financial situation was such in France at that time that we desired all the money we could get over there and were willing to make sacrifices to get the money over there, and again, the freight prepaid belongs to the carrier under the terms of the bill of lading whether the ship is lost or not lost, and whereas we had moneys at risk where the freights were prepaid we did not pay any attention, as the shipper was probably in the same position in regard to getting the money over there which he could have got by means of draft or telegraph, and where we were compelled to insure or assume the risk ourselves, and we never knew whether it would be one or fifty per cent, including the expenses of lightering and wharf and therefore we directed ourselves as far as possible to the proposition of making it a fair rate of exchange. We did not know where the exchange would go, but we gave him the difference, we often gave him the difference on cargo steamers because the steamers were smaller and faster, but the conditions as to payment were the same on both— They had that option. We all knew it. 986 987

Mr. Holmes (Interrupting): I object to so much of the answer as not responsive and also as immaterial that they had the option. It is not shown that we had any option. I also object to it as a conclusion.

988 *Defendant's Exhibit C.*

Q. Read that for the Examiner (handing paper to witness). A. (Reading) "For shipments accepted with freight payable at destination the rates in this tariff will be converted in dollars on the fixed basis of five francs per dollar."

Mr. Holmes: Unless it is shown we were served with a copy or had notice of anything like that, I object to the answer that we had an option as irresponsive to the question, and as a conclusion not supported by anything. We couldn't have an option without knowing it.

989

Examiner Manghum: I think the witness ought to confine his statement as to what the provision was in the tariff.

Mr. Nolan: I am going to bring that in in just a moment or two. I wanted the general situation and the reason for it which he has given briefly. I want to bring out the balance of the reason for fixing that tariff. He has shown now that the rate of insurance was such that if the ship was sunk the shipper was at a loss and if prepaid the company got it.

990

Mr. Holmes: I move to strike out his statement that the shipper had an option under this tariff.

Mr. Nolan: I will go on.

Q. In addition to the reasons which you have given for the company's fixing the different basis for payment of freight at destination, Mr. Cauchois, was it not also true that when the freight was paid at destination the company again was put to the expense of transfer of the money to

991

France, and that was a further expense to the shipper? A. Absolutely. This put an extra charge on their exportation.

Q. Now, Mr. Cauchois, can you tell us whether or not these rates, both for destination and for prepaid rates, were announced to shippers generally through you here in the United States?

Mr. Holmes: Objection.
Examiner Manghum: Overruled.
Mr. Holmes: Exception.

992

A. Why, the shippers of ordinary small commodities never interested themselves much, but the shippers of important amounts wanted to know what the tariffs were, also the conditions under which they were carried, not only the rate but the conditions. They were all conversant with it, and they would ask for it.

Q. During the period under discussion, the general conditions surrounding the shipment of goods from the other side to here were not the same as in normal times? A. Absolutely not.

Q. Shippers during the period under discussion were compelled from time to time to ask specific questions of the company, where in normal times they followed the usual course, is that correct? A. Correct.

993

Q. You were in charge of these rate sheets in the New York office? A. Yes.

Q. And those inquiries would be addressed to you in each case. A. They would come to me in the course of the correspondence or through employees asking conditions which only could be answered by the tariff which I held.

Q. No clerk in the office had authority to quote

994 *Defendant's Exhibit C.*

rates without obtaining information from you and carrying your message to the shipper? A. Absolutely.

Q. Speaking of Harold Nolan who is a witness here this morning, will you please tell us the circumstances under which he was sent to France? A. We found he was a very bright boy, but was not speaking French, and as is customary with the company we exchange employees between the two agencies for a limited period to
995 learn the freight business, and learn how they handle the business over there and all questions such as these, and when he came back with that knowledge, things simplified. We always have two or three men going and coming all the time.

Q. Then he would have particular opportunities to know the business done on the other side, as distinguished from the ordinary clerk? A. Yes, during the period he was there.

Q. Going back to the New York office, at any time during the period that these tariffs were in force, did you receive any communications
996 from the American Tobacco Company? A. My recollection is that on several occasions a representative of the American Tobacco Company called on me and asked me to use my efforts to move his property forward promptly, also to let me know, particularly at Bordeaux, how many cases were there and how many were coming, and we had to get that by cable to oblige him.

Q. Did he at any time ask about the rate? A. Oh, no.

Q. Never. A. As a matter of fact the rates are made on the other side westbound, and we only

know what the rates are by the tariff. If he had any complaint to make of the rate, he would take it up with me to take it up officially. 997

Q. The general system of shipping freight from the other side is followed usually through the hands of the forwarding agent or express company, is that correct? A. As a rule, yes.

By Mr. Holmes:

Q. Do you know what was the rate on war risk insurance during this period? A. I told you it varied from one-quarter to fourteen per cent. It varied daily. 998

Q. Some time after the war. I am not speaking about the war period. A. I do not know what the rate was after the war because the war risk naturally declined but they are still covering today on a war risk.

Q. Isn't it a fact today that they are covering the war risk in your insurance policy but they are not charging you for it? A. I do not know. I am not interested in that. I am only interested in the war period. 999

Q. Let us refer to the period in question, which is May 1st, 1919 to January, 1921. During that period can you state approximately what the war risk insurance was? A. No, not for a minute. I told you I had no knowledge at that time. I had no specific insurance to make at that time.

Q. It is true, is it not, that it was very much less after November, 1919? A. I haven't the slightest idea.

1000 *Defendant's Exhibit C.*

Q. How long were you familiar with it; when did your familiarity cease? A. The Armistice was in 1918. I suppose up to 1918. July or August 1919 I knew that the war risk was less.

Q. Could you give approximately how much less? A. No, I was out of the insurance rates at that time, that is out of taking any interest in the insurance rates at that time.

(Ten minutes recess).

1001

(After recess.)

By Mr. Nolan:

Q. The question of war risk insurance rate or marine insurance rate was not the only element that went into the fixing of this basis of five francs? A. No.

Q. Will you please tell us, Mr. Cauchois, what elements operated in the company to continue this rate of five francs after the Armistice

1002 period?

Mr. Holmes: I want to object to that for this reason. This particular hearing is to determine whether there was discrimination, and these questions go to the point of reducing any discrimination if there was such, and it seems to me they are material only when they go to the question of how much the discrimination or reparation would amount to. If our claim for reparation on the basis of dis-

Defendant's Exhibit C. 1003

crimination is allowed all these matters may be pertinent to reducing the amount of the claim. These details would only go to the extent of reducing that discrimination.

Mr. Nolan: Mr. Holmes overlooks a very important feature of this. It is the company's duty to establish before this court the fact that it was not arbitrary in fixing the rate of freight whether at destination or for pre-paid freight, and 1004
second, having fixed such a rate it left it open to everybody and this goes to just that question, as to the fairness of the five franc rate at destination.

Mr. Holmes: If we have shown the facts which constitute discrimination, and it is held that we are entitled to reparation on some basis or other it is conceivable that items may be shown which will reduce that, or negative it possibly, but the discrimination nevertheless in a prima facie case is not allowable, and it seems to 1005
me that until we come to the question of how much the reparation should be that these items which tend to reduce it would not be material.

Examiner Manghum: Objection overruled. The witness gives some facts which he believes furnish an inducement or reason for putting the rate in this form or whether or not these facts constituted justification. Objection overruled.

Mr. Holmes: Exception.

1006 *Defendant's Exhibit C.*

Examiner Manghum: Exception allowed. Read the question.

(Question read.)

A. The fluctuating rate of exchange. We could not afford to take the risk of the freights coming payable at destination on pre-war conditions and exist now exchange payable at the rate of exchange of the ship's arrival. We would be all at sea in regard to our actual receipts.

1007 The franc was dropping. No matter what tariff we published in francs, if the freight was payable at destination, by the time the ship arrived here the franc would be so low that we would get very little remuneration,—not commensurate with the work.

Q. And the risk? A. And the risk of the marine risk which always existed in the war risk, the marine risk at that time and the slight war risk, as freights payable at destination are not recoverable, we could not afford to cover it rather than change the tariff and make the rates

1008 higher in France we make it as it was.

Q. Giving to? A. Giving to all the shippers the right as they always have the right if they wish it. The bill of lading shows whether they accepted the conditions or not.

Mr. Holmes: Might I have an exception to testimony that all the shippers were given the right.

Examiner Manghum: These tariffs were applicable to the public generally.

The Witness: Oh yes, anybody could go

Defendant's Exhibit C. 1009

in and ask for a tariff if he wished it or wanted to ship freight. It is a public matter.

Examiner Manghum: The rates and conditions in the tariffs were open?

A. Certainly. Printed by thousands, not secret, or they would not have been printed. We did not print the tariffs in New York, but I had my tariffs made up here, but we did not have printed tariffs in New York. 1010

Mr. Holmes: How can we be bound by the fact that they printed them?

Examiner Manghum: You object, I think, to his statement that all shippers were given the same rights under this tariff.

Mr. Holmes: I think it is a little broader that that. Let us hear the question again.

(Question repeated.)

Mr. Holmes: I object to it as not binding upon us and the fact that they have 1011 printed thousands of them is not binding upon us.

Examiner Manghum: Objection overruled.

Mr. Holmes: Exception.

Q. (Mr. Nolan) Mr. Cauchois, did other shippers of the same class of commodities pay the rate of freight, some at destination and some in advance, in the same ships that their goods came in? A. I suppose you mean by similar commodities, you do not mean specifically paper, you

1012 *Defendant's Exhibit C.*

mean similar commodities that are rated on the basis of paper, that is as far as rate and measurement are concerned. You mean the same class of measurements, you do not mean similar commodities.

Q. The same class of merchandise? A. Absolutely, yes.

Q. I show you two bills of lading, one dated the 28th of August, 1917, and one the 15th day of December, 1917, which I have selected at ran-
1013 dom or your clerk has, and ask you if those are the copies of the bills of lading showing shipments to the American Tobacco Company? A. Yes.

Mr. Nolan: I offer these in evidence, Mr. Manghum, solely for the purpose of showing in 1917 when that first tariff was published there the goods were shipped to them on the dollar basis, and they paid on the dollar basis for them.

1014 Q. I hand you a paper dated November 1st, 1917, and ask you what that is. A. That is a tariff on westbound freight in vigor between Havre, Bordeaux, St. Nazaire, de la Pallice to New York and New Orleans.

Examiner Manghum: French Line tariff?

The Witness: Compagnie Generale Transatlantique.

Mr. Holmes: Mr. Examiner I make the request that in lieu of testimony to that

 1015

effect, we be permitted to file a letter from Johnston & Higgins the well known insurance brokers and adjusters, showing the rate on war risk insurance during the period covered by the claim and mark that in evidence insofar as it may be material as bearing on our claim based on one of our three theories of damages.

Mr. Nolan: I would suggest that that statement be made by the insurance adjusters to contain the rates of insurance 1016
covering the particular commodities, and also the rate which would apply for the prepaid freight without insurance.

Mr. Holmes: Very well.

Examiner Manghum: Let the statement be filed within twenty days.

Mr. Nolan: May I open the case for one moment to ask this witness a question about the situation as to labor following the armistice which is one of the elements of expense.

Mr. Holmes: I have no objection to that 1017
if it is material.

Mr. Nolan: It comes in under the same head as to the reasons.

Examiner Manghum: All right.

By Mr. Nolan:

Q. Mr. Cauchois, in the elements of expense surrounding the operation and loading of the ship and also the labor for managing the ship on the voyages, is that a considerable element of expense? A. Certainly.

1018 *Defendant's Exhibit C.*

Q. During the period following the armistice, including the period involved in this suit, the rate of labor, wages in all classes affecting the loading and handling of freight and management of the ship was higher than in pre war times?

Mr. Holmes: Objection as immaterial, irrelevant and incompetent.

Examiner Manghum: Objection overruled.

1019 Mr. Holmes: Exception.

A. Yes.

Q. Can you say whether it was two or three times the pre war rates? A. About two and a half times. It went up during the war and gradually edged off.

Mr. Holmes: Same objection.

Overruled.

Exception.

1020 Q. During the period following the armistice would you say it was in the neighborhood of twice? A. Pretty nearly twice.

Examiner Manghum: I presume the parties desire to file briefs.

Mr. Holmes: Yes.

Examiner Manghum: The complainant will be allowed thirty days from the date of receipt of transcript within which to file its opening brief. Respondent to be allowed thirty days from service of the opening brief within which to file its answering brief, and the complainant to be al-

Defendant's Exhibit C. 1021

lowed twenty days from date of service of the answering brief within which to file its reply brief.

Mr. Nolan: Could I have five days after that period to file any replying brief?

Examiner Manghum: That is as far as we go.

Mr. Nolan: Before we go I would like to offer a corrected translation of a letter which appears at pages 105 and 106 of the record. The change is in this last sentence.

The letter is as follows: 1022

"Copy—Translation.

Compagnie Generale Transatlantique.
6 rue Auber—Paris.

Paris, Feb. 10th, 1921.

Trafic

The American Tobacco Company,
111 Fifth Ave., New York. 1023

Gentlemen:

We beg to reply to your letter of January 25th, contents of which were carefully noted, which they rightly deserved.

We desire to inform you that, owing to the fact that the exchange seemed to stabilize itself for a certain time at a high rate, we have just taken the decision of collecting, in the future, that is to say, for steamers leaving France beginning February 15th next, freight payable in

1024 *Defendant's Exhibit C.*

New York at the rate of exchange of the day of arrival of the steamer, this freight being taxed in French money when it is payable at destination, just the same as when paid in advance. The question which you have raised will therefore receive satisfaction.

However, this question, which we had already taken up when your letter reached us, could not have a retroactive effect, and therefore we beg to express our regrets at being unable to con-
1025 sider favorably your request for the removal of the tax for the past shipments, which you so kindly submitted to us.

"We will add, that under the circumstances, you have been favored as far as the other members of our clientele, being given that the method formally followed was applied to all our traffic, without exception. The freight, when paid in advance, was taxed in francs, but when it was payable at destination, the rate was transformed into dollars at the exchange of 5 francs, or, each one was allowed to pay the freight at the time
1026 of departure, if he wished to take advantage of the difference in freight which resulted therefrom.

Very truly yours,

CHIEF OF TRAFFIC DEPARTMENT."

Examiner Manghum: The parties state that there were some typographical mistakes in the record of the first hearing. They have gone over the record and prepared a statement containing

such corrections, and also showing what the corrections should be, which are as follows:

"April 7, 1922.

American Tobacco Co. vs. Compagnie Generale Transatlantique. Docket No. 13.

Joseph P. Nolan, Esq.,
25 Broad Street,
New York City.

Dear Mr. Nolan:

Referring to our conversation on the telephone, in which we were both agreed that it might be well to note errors and corrections in the record. I am writing you and sending an extra copy of this letter with the suggestion that you note your approval of it in some way, with such further suggested changes as you may have, whereupon we may send it to Mr. Manghum and perhaps save a little time, when the hearing comes up, in making corrections. For the sake of brevity I may say that I will note first the text of the record as it now appears and then the changes suggested.

p. 2 L. 13.

January 3rd	January 25th

p. 4 L. 4.

"charged the rate in f r a n c s—the rate in francs should"	"charged the rate in francs on the dates of billing. The rate of francs should"

1030 *Defendant's Exhibit C.*

L. 8.

"two theories"	two or three theories

p. 6 L. 4.

(Change not agreed to.)

p. 19 last line.

"s"	Yes.

p. 25 L. 15.

1031 "didn't"	"did"

p. 37 L. 1.

"Mr. Nolan"	"Mr. Holmes"

p. 40 L. 7th from bottom.

"to find out what was the best way to prove this thing".	"to produce the best evidence."

p. 42 L. 8.

"are"	"do"

1032 *p. 44 L. 3.*

"I thought the case would fall"	"I thought the case as to unproved shipments would fall."

p. 54 L. 4th from bottom.

"You take both the buying and selling add them together"	"You take both the buying and the selling, add them together, divide by 2"

Defendant's Exhibit C. 1033

p. 62 L. 1 & 2.

Change them to read as follows:

"I do not know that this testimony is absolutely necessary. What I mean to say is"

p. 62 L. 5.

"reported" "imported"

" *L. 7.* 1034

"will" "would"

p. 63 L. 6.

"did" "do"

p. 74 L. 7.

"our" "your"

" *L. 12 & 19.* 1035

Leave out the final "e" in
De Mauduit.

p. 78 L. 8th from bottom.

"well nigh" "quite easy"

" *L. 6th from bottom.*

"and" "but"

1036 *Defendant's Exhibit C.*

" *L. 2nd from bottom.*

After "duplicate originals" say: "of some, not all"

p. 80 L. 2.

"ports" "parties"

p. 81 L. 11.

"could not be" "could be"

1037

p. 83.

In the stipulation that I read into the record, the second line from the bottom of the page, after the word "shipments" I desire to add: "were cigarette papers in books or in bulk" so as to have the whole thing complete.

It appears from Mr. Nolan's statement on p. 82 that the commodity was cigarette papers but I think it ought to all be set forth in the stipulation.

1038 In the last line (p. 83) after the word "indicated" I desire to insert, in brackets, "on the dates there indicated", the dates being indicated after the name of the ship by numerals for day, month and year consecutively instead of, as is customary, by writing the month first, then the day and then the year.

p. 84.

Reference should be made to Exhibit B as being in the exhibit book and it should be mentioned in the index.

Defendant's Exhibit C. 1039

At the end of line 3 (referring to this exhibit) these lines should be added:

> "Where 'M3' is used above a figure or at the head of a number of figures in a column, the figure indicates cubic meters; likewise when 'm' is used. Where the letter 'T' is used the figures below that indicate one thousand kilos, or, if the period is read as a comma, kilos."

p. 95 L. 13, 14 & 15. 1040

Should read: "what Mr. Nolan is driving at is that if we control another corporation it might in some way be an agency".

I make the above suggestion if p. 95 is permitted to stand. As a matter of fact this was intended to be off the record and I was conversing freely with counsel with no intention that it be made a part of the record, so I think p. 95 ought to be stricken out.

p. 97 L. 9.

"one that" "one thing that" 1041

" *L. 10.*

"they" "we"

p. 101 L. 8th from bottom.

"department" "defendant"

p. 102 and 103.

Drop final "e" in DeMauduit.

p. 110 L. 8.

"propriety" "matter"

1042 *Defendant's Exhibit C.*

p. 124.

Drop final "e" from DeMauduit.

p. 124 L. 3rd from bottom.

(not agreed to)

p. 125 L. 1.

1043	"and my knowledge would not be their knowledge"	"and their knowledge would not be my knowledge"

p. 126.

Drop final "e" from DeMauduit

p. 127 L. 9 & 10.

Should read: "Well, I take it by this question he intends to bring out or to charge to us"

1044 *p. 127 L. 14.*

"fact of our control"	"fact besides our control"

p. 138 L. 2nd from bottom.

"proper question"	"improper question"

p. 139 L. 8 & 9.

"make a s t a t e m e n t without going around and asking a question"	"Consult my associate, Mr. Lucas before asking a question."

Defendant's Exhibit C. 1045

p. 139 L. 8th from bottom.

"a question" "the question"

p. 143 beginning with L. 5.

Figures should be corrected to read as follows: "A. The date of the bill of lading is in Column 14, the rate on that date in Francs as alleged by us in Column 15 and 16. In Column 19 we show the dates that the boat line bills us for freight charges and in Columns 20 and 21 we show what we allege to be the rate of exchange in New York on that date. In Column 24 we show the date that the French Line received payment and Column 25 is expressed the francs per dollar, and in Column 26 the dollars per franc as we allege them on the date the freight charges were paid." 1046

Lines 5 to 14 inclusive can then all be stricken out.

Won't you be good enough to look this over and make any additions or amendments that occur to you and approve it if it is all right and then I will send it to Mr. Manghum and it will perhaps save some time at the next hearing. 1047

Very truly yours,

(Signed) J. H. Holmes.

P. S. Mr. Lucas calls my attention to the following:

p. 111 L. 7.

$433.57 should be $ 427.57

1048 *Defendant's Exhibit C.*

L. 9.

$1882.55	should be	$2117.85

L. 12.

$177.59	should be	$ 199.77

L. 14.

$1704.96	should be	$1918.08

1049

I think this mistake occurred from reading the wrong line and is obvious. J. H. H.

Cauchois Ex. 1.
May 18, 1922.

"Chasehill"	January 18, 1916.
"Suevier"	February 16, 1916.
"Maroni"	March 6, 1916.
"Louisiane"	March 9, 1916.
"Harrovian"	April 16, 1919.
1050 "Strathdene"	October 8, 1916.
"Strathtay"	November 6, 1916.
"King Bleddyn"	December 10, 1916.
"Strathalbyn"	December 10, 1916.
"Toftwood"	January 13, 1917.
"Belgier"	February 23, 1917.
"Cacique"	February 23, 1917.
"Norma Pratt"	March 16, 1917.
"Ohio"	March 7, 1917.
"Chorley"	March 22, 1917.
"Lincolnshire"	March 29, 1917.
"Cairnhill"	April 17, 1917.
"La Meuse"	May 14, 1917.

Defendant's Exhibit C. 1051

"Penistone"	August 11, 1918.
"Wenthworth"	September 2, 1917.
"Vienna"	September 11, 1918.
"Jeanne Marie"	March 15, 1918.
"Texandrier"	February 13, 1917.
"Yarrowdale"	April 12, 1916.
"Strathallan"	April 22, 1916.

ADJOURNED SINE DIE.

JAL

ASHMEAD EXHIBIT No. 1. 1052

OPEN POLICY No. 1436

THE IMPORTERS AND EXPORTERS INSURANCE CO. of New York

Home Office—17 South William Street.

THE AMERICAN TOBACCO COMPANY on account of whom it may concern in case of loss to be paid in funds current in the United States, do make insurance and cause themselves to be insured, lost or not lost, at and from as per attached 1053 upon all kinds of goods and lawful merchandise laden or to be laden on board the good—as per attached— Whereof is master of this present voyage, or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel or the master thereof, is or shall be named or called.

BEGINNING the adventure upon the said goods and merchandise, from and immediately follow-

1054 *Defendant's Exhibit C.*

ing the loading thereof on board of the said vessel at as aforesaid, and so shall continue and endure until the said goods or merchandise shall be safely landed at as aforesaid. And it shall and may be lawful for the said vessel in her voyage to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said goods and merchandise, here-
1055 by insured, are valued (premium included) at (as per attached)

Touching the adventures and perils which the said insurance company is contended to bear, and take upon itself in this voyage, they are of the seas, fires, pirates, rovers, as sailing thieves, Jettisons, criminal barratry of the master and mariners, and all other like perils, losses and misfortunes, that have or shall come to the hurt, detriment or damage of the said goods and merchandise or any part thereof. And in case of any
1056 loss or misfortune, it shall be lawful and necessary to and for the assured, his or their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance, nor shall the acts of the insured or insurers, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or acceptance of an abandonment; to the charges whereof, the said insurance company will contribute according to the rate and quantity of the sum herein insured. The

Defendant's Exhibit C. 1057

consideration of this insurance is fixed at a rate as endorsed.

Premiums payable monthly in cash.

This Company is to be entitled to premium at their usual rates on all shipments reported or not. It is warranted by the insured to report every shipment on the day of receiving advice thereof, or as soon thereafter as may be practicable, when the rate of premium shall be fixed by the Company.

1058

And in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said (as per attached). (The amount of premium, if unpaid, being first deducted), but no partial loss or particular average shall in any case be paid unless amounting to five per cent., Provided Always, and it is hereby further agreed that if the said assured shall have made any other insurance, upon the premises aforesaid, prior in day of date of this policy, then the said insurance company shall be answerable only for so much as the amount of such 1059
prior assurance may be deficient towards fully covering the premises hereby assured; providing notice of deficiency of such prior assurance be given to this company before arrival of vessel; and the said insurance company shall return the premium upon so much of the sum by them assured, as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises subsequent in date to this policy, the said insurance company shall nevertheless be answerable for the full extent of the sum by them subscribed thereto, without right

1060 to claim, contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent assurance had been made. Other insurance upon the premises aforesaid, of date the same day as this policy, shall be deemed simultaneous herewith and the said insurance company shall not be liable for more than a ratable contribution in the proportion of the sum by them insured to the aggregate of such simultaneous insurance.

1061 Warranted not to abandon in case of capture, seizure or detention, until after condemnation of the property insured; nor until ninety days after notice of said condemnation is given to this company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention or blockade, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage. It is also agreed that the property be warranted by the assured free from any

1062 charge, damage or loss which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade, or any trade in articles contraband of war or the violation of any port regulation.

It is agreed that upon the payment of any loss or damage the Insurers are to be subrogated to all the rights of the Assured *under* their Bills of Lading or transportation receipt to the extent of such payment.

This insurance warranted to be in all cases null and void to the extent of any insurance by any carrier or bailee which would attach and cover

Defendant's Exhibit C. 1063

said property if this policy had not been issued and to be null and void as concerns loss or damage by fire on land to the extent of any insurance against loss or damage by fire, directly or indirectly covering upon the same property, whether prior or subsequent hereto in date, and it is also understood and agreed, that in case any agreement be made or accepted by the assured with any carrier or bailee by which it is stipulated that such or any carrier or bailee shall have, in case of any loss for which he may be liable, the benefit of this 1064
insurance, or exemption in any manner from responsibility grounded on the fact of this insurance, then and in that event the insurers shall be discharged of any liability for such loss hereunder, but this policy in these and all cases of loss or damage by perils insured against shall be liable and owe actual payment for (only) what cannot be collected from carrier and/or bailee and/or insurers of property lost or damaged, but also shall be chargeable with the direct pecuniary consequence to the assured temporarily arising from delay in collection from said carrier and/or bailees and/or 1065
insurers, and the advancing for this purpose only of funds to the assured for this protection pending such delay shall in no case be considered as affecting the question of the final liability of this insurance, and as soon as collection is made from the carrier and/or bailees and/or insurers, the title of the assured to hold the sums so advanced by the insurer shall discontinue, and a portion thereof equal to the sum collected from the carrier and/or bailees and/or insurers, should be repaid to the insurer but in case of final failure to collect from the carrier and/or bailees

1066 *Defendant's Exhibit C.*

and/or insurers, a portion of the sums advanced by the insurers, equal to the sum short collected from the carrier and/or bailee and/or insurers, may be retained and applied in settlement of the actual liability of this insurance thereby established (provided always the loss shall constitute in other respects a claim under this insurance). In the event of loss or damage this policy shall be null and void to the extent of any payment made by any carrier or bailees or insurers whether liable or not.

1067

Memorandum. It is also agreed, that printed books, cassia in mats, carriages, charts and maps, dye woods and dye stuffs, engravings and prints, dried fish, green fruit, firecrackers, guano, hay, hempen yarn, hops, cement, iron ore and metals, (of all kinds), coal, ginger and linseed in pockets, mahogany and any other woods, musical instruments, paintings and statuary, personal effects, rattans, salts, seeds, tin plates, vegetables and roots, wicker ware and willow (manufactured or otherwise), wire of all kinds, clothing (ready made), and all articles that are perishable in their own nature, are warranted by the assured free from average unless general; bacon (in boxes or bales), bleaching powder, cassia (except in mats) cotton bagging (in series of 50 bags), drugs and chemicals, dried fruit, floor cloths, floor oil cloths, grain (on European passages, and on the Mississippi River and its tributaries and from San Francisco), Hessians, burlaps, and (similar articles), hemps, carpetings household furniture (new), looking glass

1068

1069

plates, mats and matting, moss, oil cake, paper hangers, paddy, rags, soda ash, sumac, tampico grass, leaf tobacco, in boxes or bales (in series of 50 bales), and tobacco stems are warranted by the assured free from average under twenty per cent. Unless general; bread, flax and sugar (in series of 100 barrels) 50 boxes; 20 hhds; 100 bags East Indian, or 200 bags South American) are warranted by the assured free from average under seven per cent, unless general; and cheese, coffee and cocoa (in series of 100 bags), grain

1070

(coastwise), gunnies (in series of 50 bales), Indian meal (in series of 10 hhds. or 100 barrels), jute, hemp, hides (in series of 1,000), linseed, madder, pepper, pimento, quercitron, bark, rice meal (in series of 50 bags), skins, straw goods, saltpetre, leaf tobacco in hhds. (in series of 10 hhds.), and manufactured tobacco, are warranted by the assured free from average under ten per cent. unless general; agricultural implements, bricks, coal, cutlery, hardware, lumber, machinery, marble, railroad iron, slate, steel rails, stone and wooden ware are warranted by the as-

1071

sured free of claim for damage or for any breakage, but liable for absolute total loss or a part (entire packages), if amounting to five per cent.

Warranted by the assured free from damage or injury from dampness, change of flavor or being spotted, discolored, musty or mouldy, except caused by actual contact with sea water with the articles damaged occasioned by sea perils. In case of partial loss by sea damage to dry goods, cutlery or other hardware, and on shipments from ports and places east of the

1072 *Defendant's Exhibit C.*

Cape of Good Hope on gunny cloth, gunny bags or hides, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise, as far as practicable. Not liable for leakage on molasses or other liquids, nor for breakage of glass, crockery or other bottle wares, unless occasioned by stranding or collision with another vessel. And it is
1073 also agreed that in case of loss or damage to any part of a machine consisting when complete for sale or use of several parts, insurers shall only be liable for the insured value of the part lost or damaged.

In case of damage from perils insured against, affecting labels, capsules or wrappers, loss to be limited to an amount sufficient to pay the cost of new labels, capsules or wrappers, and costs of reconditioning the goods, provided same amounts to a claim under the terms of this policy.

1074 If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

Warranted by the assured free from loss or expense arising from the capture, seizure, restraint, detention of destruction, or the consequence of any attempt thereat, whether lawful or unlawful, and whether by the act of any belligerent nations or by governments of seceding or revolting states, or by unauthorized or unlaw-

Defendant's Exhibit C. 1075

ful persons therein or otherwise, and whether occurring in a port of distress or otherwise, anything in this policy to the contrary notwithstanding.

This insurance is not to cover more than $25,000 on Deck nor more than $250,000 under Deck by any one steam vessel or in any one place at one time, unless otherwise agreed upon at the time of endorsement.

This policy to be deemed continuous and to cover as above unless discontinued by either 1076
party on giving the other .... days notice in writing, which cancellation, however, is not to affect any risk then pending.

Further, the insurer may effect immediate cancellation by giving written notice thereof at any time when any premiums have been due and unpaid for a period of thirty days; but such cancellation shall not affect risks which have attached prior to notice of cancellation.

This policy is also to cover such risks as may be approved by the company and endorsed on pass book or policy. 1077

Proofs of loss and all bills of expenses must be approved by the agent of the company, if there be one at or near the place where the loss occurs, or the expenses are incurred, or if there be none in the vicinity, by the correspondent of the National Board of Marine Underwriters; and such agent or correspondent must be represented on all surveys.

Warranted by the assured if loaded with Grain, petroleum and heavy cargoes to be loaded under the inspection of the surveyor, appointed

1078 *Defendant's Exhibit C.*

or approved by this company for that purpose, and his certificate as to the proper loading and seaworthiness obtained.

All risks insured as under deck, unless otherwise specified in this policy. Only such cargoes as shall be stored under the main deck shall be deemed stowed under deck. Cargo on deck free from claims of loss by wet, breakage, leakage or exposure and liable only for absolute total loss or a part amounting to ten per cent.

1079 It is agreed that there shall be no return of premium if interest insured be lost by perils not insured against hereunder.

In Witness Whereof, the said Company has caused these Presents to be signed by its President in the City of New York, but this policy shall not be valid unless countersigned by the Company's duly authorized representative.

Leon Schinasi,
President.

1080

Countersigned at New York the 17th day of August, 1920.

By The Importers & Exporters Ins. Co. of N. Y.

By the Trans-Marine Underwriting Agency, Inc.

E. D. West,
Vice President.

Defendant's Exhibit C. 1081

THE AMERICAN TOBACCO COMPANY

As now is or may hereafter be constituted.

For account of whom it may concern.

Warranted not to cover the interest of any partnership, corporation, association or persons, insurance for whose account would be contrary to the Trading with the Enemy Acts or other statutes or prohibitions of the United States and/or British Governments. 1082

Loss, if any, payable to assured or order.

To cover on all shipments of merchandise and goods of every description, under and/or on deck (including prepaid and/or advance and/or guaranteed freight and/or charges, if any) made by them or by others for their account, their own property or that of others in which they may have an interest or which may receive orders to insure, such orders being given in writing prior to shipment or prior to any known loss.

To apply to all shipments and on and after August 21, 1920. 1083

Merchandise shipped under deck consisting principally of tobacco and/or cigarette paper and/or supplies and/or machinery and/or freight when prepaid is insured.

Subject to particular average, if amounting to three per cent (3%), each case and/or shipping package separate insured. On cigarette paper in boxes and/or books, it is agreed that these assurers are to pay a total loss on all packages, which are damaged by sea perils in any way and which the assured elect either to destroy or re-

1084 *Defendant's Exhibit C.*

turn to the shipper, it being further understood that the clause covering partial loss on duties does not apply to such goods.

It is specially understood and agreed that on import shipments of cigarette paper in boxes and/or books, the risk of fresh water damage is included to an amount not exceeding twenty five hundred dollars ($2500) in any one loss, without regard to percentage.

This policy also covers the partial loss sus-
1085 tained on the duties imposed on the merchandise insured hereunder by reasons of perils insured against, but subject to the policy terms of average. The assured warrants, that on all risks insured under this policy, separate amounts shall be reported equal to said duty, upon which the permium shall be one-third of the cargo rate. The assured shall, when the company desires it, but not otherwise, surrender the damaged merchandise to the customs authorities and be thereby relieved from the payment of duties thereon, as provided by law; and in that event, the claim
1086 under this policy shall be for a total loss of such portion at the insured value, which the addition of expenses actually incurred.

It is understood and agreed that the duty is not insured on shipments of merchandise as above described when packed in vacuum tins, but that the duty clause in this policy is applicable only to merchandise packed otherwise than in vacuum tins.

All goods shipped on deck are insured: warranted free of particular average unless caused by the vessel being stranded, sunk, burnt, on

Defendant's Exhibit C. 1087

fire or in collision, but including risk of jettison and/or washing overboard, irrespective of percentage.

Valued, premium included at invoice value, plus all charge, commissions, prepaid and/or advanced and/or guaranteed freight, if any, 15% added. The £ Sterling of invoice is valued hereunder at $4.87.

For iron or steel steamer or steamers, motor vessel or motor vessels (excluding sailing vessels) (and auxiliary powered sailing vessels), 1088
and connecting conveyances.

To be insured lost or not lost at and from ports and/or interior places in the world to ports and/or interior places in the world direct or otherwise including risk of transshipment, if any.

Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof, of any attempt thereat (piracy excepted) and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

Warranted free of loss or damage caused by 1089
strikes, locked out workmen or persons taking part in labor disturbances or riots or civil commotions. This policy shall be liable for contribution in general average only in the proportion that the amount insured hereunder bears to the contributory value.

General average and salvage charges payable according to foreign statement or per York Antwerp Rules if in accordance with the contract of affreightment.

Held covered, at a premium to be arranged, in

1090 *Defendant's Exhibit C.*

case of deviation or change of voyage or of any omission or error in the description of the interest, vessel or voyage.

Including (subject to the terms of the Policy) all risks covered by this policy from shippers or manufacturers' warehouse until on board the vessel, during transshipment, if any, and from the vessel whilst on quays, wharves or in sheds during the ordinary course of transit until safely deposited in consignees or other warehouses at
1091 destination named in Policy, except that in respect of shipments to the River Plate, the risks under this insurance shall cease upon arrival at any shed (transit or otherwise) store, custom house or warehouse, or upon the expiry of ten (10) days, subsequent to landing, which ever may first occur.

Including risk of craft and/or lighter to and from the vessel. Each craft and/or lighter to be deemed a separate insurance. The assured are not to be prejudiced by any agreement exempting lightermen from liability.

1092 Including all liberties as per contract of affreightment. The assured are not to be prejudiced by the presence of the negligence clause and/or latent defect clause, in the Bills of Lading and/or Charter Party. The seaworthiness of the vessel as between the Assured and the Assurers is hereby admitted.

It is understood and agreed that where this policy attaches on goods on railroad the risks of fire, rising water, derailment and collision only are covered, and that where this policy attaches on goods while on any other land con-

Defendant's Exhibit C. 1093

veyances, or while on docks, wharves or elsewhere on shore, the risks of fire and damage by rising water only are covered.

The risks covered by this Policy are to include loss, damage or expense resulting from explosion, however or whatsoever occuring provided same is shown not to have been caused by or attributed to any of the risks excluded by the terms of the F. C. & S. Strikes, Riots and Civil commotions clauses.

This policy to be deemed continuous and to 1094
cover as above until discontinued by either party on giving the other party thirty (30) days notice in writing, such cancellation, however, is not to affect any risk then pending.

It is warranted by the Assured to report all shipments hereunder to the Importers' and Exporters' Insurance Co., within 48 hours after sailing of vessel (Sundays and Holidays not counting), or as soon thereafter as may be practicable.

The above clauses and conditions are ad- 1095
ditional to those contained in the Annexed Policy and so far as they are inconsistent therewith are to supersede the same.

This policy also to cover such other risks as may be reported to and accepted by the Assurer.

Attached to and forming part of policy No. 1436 of the Importers and Exporters Insurance Company of New York.

1096 *Defendant's Exhibit C.*

IMPORTERS AND EXPORTERS INSURANCE COMPANY OF NEW YORK.
17 So. William Street, New York.

Certificate No. Folio

THE TRANS-MARINE UNDERWRITING AGENCY, INC.
of New York
17 South William Street, New York.

Underwriting for the

1097 Importers & Exporters Insurance Company
of New York

Endorsement attached to and forming part of Open Policy No. 1436.

THE AMERICAN TOBACCO COMPANY.

Notwithstanding anything contained herein to the contrary it is understood and agreed that war risk is included on shipments from ports in the United States to ports in the World generally, as per Clause attached, at rates to be arranged, until cancelled by either party on giving the other
1098 five days' notice in writing, which cancellation, however, is not to affect any risk then pending.

All other terms and conditions remaining unchanged.

New York, August 17, 1920.
Rodgers & Carr.
The Importers & Exporters Insurance Co.
of N. Y.

By the Trans-Marine Underwriting
Agency, Inc.,

C. D. WEST,
Vice President.

Defendant's Exhibit C. 1099

WAR RISK CONDITIONS

Including risk of mines, torpedoes, etc., bombs and aircraft whether hostile or otherwise.

Beginning the adventure upon the said goods and merchandise from the loading thereof on board said vessel as above, and shall so continue and endure during her abode there, and until the vessel with her goods and merchandise shall be arrived as above and be there discharged and safely landed.

1100

This insurance also covers the risk of capture, seizure or destruction or damage by men of war, by letters of marque, by taking at sea, arrest, restraint, detainment and acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations; but excluding claims for delay, determination and/or loss of market and warranted not to abandon in case of capture, seizure of detention, until after condemnation of the property insured nor until sixty days after notice of said condemnation is given to these assurers. Also not to abandon in 1101
case of blockade, and free from any claim for loss or expense in consequence of blockade or of any attempt to evade blockade but in the event of the blockade to be at liberty to proceed to an open port, and there end the voyage.

Notwithstanding anything to the contrary herein expressed, this insurance is free from loss, damage, contribution or expense in consequence of capture, seizure, detention, requisition and/or preemption by the United States Government and/or Great Britain and/or their allies.

Warranted covering while water borne only and excluding any risks on land.

1102 *Defendant's Exhibit C.*

And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, his or their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said goods and merchandise, or any part thereof, without prejudice; nor shall the acts of the insured or insurers, in recovering, saving and preserving property insured, in case of disaster, be considered a waiver or acceptance of an abandon-
1103 ment to the charges whereof, the said assurers will contribute according to the rate and quantity of the sum herein insured.

Warranted not to cover the interest of any alien enemies, including such persons, co-partnerships, corporations as now, or may hereafter appear in any Enemy Trading List issued by the War Trade Board of the United States of America or the Government of Great Britain or their allies.

TRANS-MARINE UNDERWRITING AGENCY, INC.,

1104 New York, August 17, 1920.

SCHEDULE OF RATES

applicable to Policy No. 1436 of the IMPORTERS & EXPORTERS INSURANCE COMPANY for account of THE AMERICAN TOBACCO COMPANY.

Until further notice, the following rates will apply under this policy:

By Approved Steamers of Regular Lines.

IMPORTS:

At and from ports and/or places
in Great Britain and on the Con-

1105

tinent of Europe, generally, via ports between Bordeaux and Hamburg, both inclusive: (interior risk by rail only)

Conditions as per policy

To: Ports and/or places in the United States

On Cigarette paper in rolls..20¢ per $100
On duties on same 1/12th%
" Cigarette paper in books..60¢ per $100

1106

EXPORTS:

At and from ports and/or places in the United States:

To: Ports and/or places in Great Britain and the Continent of Europe, generally, via ports between Bordeaux and Hamburg, both inclusive.

1107

(Interior risk by rail only)

On Cigarettes in cases .....15¢ per $100

Other merchandise, steamers and routes held covered at the rates of this company.

1108 *Defendant's Exhibit C.*

ENDORSEMENT.

New York, September 2, 1920.

It is hereby understood and agreed that the following values shall apply to the within described policy:

CIGARETTE PAPER.

1109 Invoice value plus 10%. The franc to be figured on the basis of 10¢. The amount of duty to be insured will be the actual amount paid to the Government. No war insurance.

CIGARETTE BOOKS.

Invoice value, plus 10%. The franc to be figured on the basis of 10¢. No war insurance.

SHIPMENTS FROM GREAT BRITAIN TO NEW YORK.

Invoice value plus 10%. The £ Sterling to be figured at $4.86.

1110

EXPORT SHIPMENTS.

The amount of insurance to be effective reported on each individual shipment in United States Currency, with such specific coverings, marine, war, theft and pilferage, etc., as may be required in each case.

THE IMPORTERS & EXPORTERS
INSURANCE CO., OF N. Y.
By THE TRANS MARINE UNDERWRITING
AGENCY, INC.,
J. PIER, President.

Defendant's Exhibit C. 1111

Subject, nevertheless, in all other respects to the same terms, conditions and agreements as originally written or endorsed.

Old Rate	New Rate	Additional Premium	Return Premium.

Attached to and made a part of Policy No. 1436 of the IMPORTERS & EXPORTERS INS. Co.

RODGERS & CARR, INC.,
80 Maiden Lane,
New York City. 1112

ENDORSEMENT.

New York, September 2, 1920.

It is hereby understood and agreed that the following values shall apply to the within described policy:

CIGARETTE PAPER.

Invoice value plus 10%. The franc to be figured on the basis of 10¢. The amount of duty to be insured will be the actual amount paid to the Government. No war insurance. 1113

CIGARETTE BOOKS.

Invoice value plus 10%. The franc to be figured on the basis of 10¢. No war insurance.

SHIPMENTS FROM GREAT BRITAIN TO NEW YORK.

Invoice value plus 10%. The £ Sterling to be figured at $4.86.

1114 *Defendant's Exhibit C.*

EXPORT SHIPMENTS.

The amount of insurance to be effective reported on each individual shipment in United States Currency, with such specified coverings, marine, war, theft and pilferage, etc., as may be required in each case.

THE IMPORTERS & EXPORTERS
INSURANCE CO., OF N. Y.
By THE TRANS MARINE UNDERWRITING
AGENCY, INC.,
1115 J. PIER, President.

Subject, nevertheless, in all other respects to the same terms, conditions and agreements as originally written or endorsed.

Old Rate	New Rate	Additional Premium	Return Premium.

Attached to and made a part of Policy No. 1436 of the IMPORTERS & EXPORTERS INS. CO.

RODGERS & CARR, INC.,
80 Maiden Lane,
1116 New York City.

ENDORSEMENT.

New York, September 2, 1920.

THE AMERICAN TOBACCO COMPANY OF THE PACIFIC COAST, INC.

It is understood and agreed that until further notice the following rates shall apply to this policy covering merchandise as per policy, by approved steamers:

Defendant's Exhibit C. 1117

At and from ports and/or interior places on the Pacific Coast—

To ports and/or interior places in Alaska and/or British Columbia and/or Canada and/or Mexico .....⅝%

THE IMPORTERS & EXPORTERS
INS. CO. OF N. Y.
By THE TRANS MARINE UNDERWRITING
AGENCY, INC.,
J. PIER, President.

1118

Subject, nevertheless, in all other respects to the same terms, conditions and agreements as originally written or endorsed.

Old Rate	New Rate	Additional Premium	Return Premium.

Attached to and made a part of Policy No. 1437 of the IMPORTERS & EXPORTERS INS. CO.

RODGERS & CARR, INC.,
80 Maiden Lane,
New York City.

1119

January 4th, 1921.

ENDORSEMENT to be attached to and made part of Policy No. 1436 of the IMPORTERS & EXPORTERS INSURANCE COMPANY.

Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that the following values shall apply to the within described policy:

1120 *Defendant's Exhibit C.*

Cigarette Paper in Reels—Invoice Value plus 10%.

Franc to be converted at 10¢.

Cigarette Paper in Books—Invoice Value.

Franc to be converted at 7¢.

On Shipments from Great Britain—Invoice value; plus 10%.

Pounds Sterling to be converted at $4.86.

1121 The Importers & Exporters Ins. Co. of N. Y.
By Trans Marine Underwriting Agency, Inc.,
J. Pier, President.

All other terms and conditions remaining unchanged.

Signed

Rodgers & Carr, Inc.,
80 Maiden Lane,
New York City.

1122 January 20th, 1921.

Endorsement to be attached to and made part of Policy No. 1436 of the Importers & Exporters Insurance Company.

Issued to American Tobacco Company.

It is hereby understood and agreed that the following values shall apply to the within described policy:

Cigarette Paper in Books—Invoice Value—
Francs to be converted at 7-½¢.

Defendant's Exhibit C. 1123

All other terms and conditions remaining unchanged.

THE IMPORTERS & EXPORTERS INS. CO. OF N. Y.
By THE TRANS MARINE UNDERWRITING AGENCY, INC.,
J. PIER, President.

RODGERS & CARR, INC.,
80 Maiden Lane,
New York City.

1124

January 24th, 1921.

ENDORSEMENT to be attached to and made part of Policy No. 1436 of the IMPORTERS & EXPORTERS INSURANCE COMPANY.

Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that the following values shall apply to the within described policy on and after the above date:

Cigarette Paper in Books—Invoice Value. 1125

Francs to be converted at 8¢.

All other terms and conditions remaining unchanged.

THE IMPORTERS & EXPORTERS INS. CO. OF N. Y.
By THE TRANS MARINE UNDERWRITING AGENCY, INC.,
(Signed) J. PIER, President.

RODGERS & CARR, INC.,
80 Maiden Lane,
New York City.

1126 *Defendant's Exhibit C.*

February 17, 1921.

ENDORSEMENT to be attached to and made part of Policy No. 1436 of the IMPORTERS & EXPORTERS INSURANCE COMPANY.

Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that the following values shall apply to the within described policy on and after the above date:

1127

CIGARETTE PAPER in Books—Invoice Value

Francs to be converted at 8½¢.

All other terms and conditions remaining unchanged.

Signed THE IMPORTERS & EXPORTERS
INS. CO. OF N. Y.
By THE TRANS MARINE
UNDERWRITING AGENCY, INC.,
C. D. WEST, President.

1128 RODGERS & CARR, INC.,
80 Maiden Lane,
New York.

THE TRANS MARINE UNDERWRITING AGENCY, INC.,
MARINE MANAGER.
47 BEAVER STREET, New York, March 16, 1921.

ENDORSEMENT attached to and forming part of Open Policy #1436 of the IMPORTERS & EXPORTERS Co. Issued to the American Tobacco Co. for $ on per

It is hereby understood and agreed that the following clauses are deleted from this policy:

Defendant's Exhibit C. 1129

"This policy shall be liable for contribution in general average only in the proportion that the amount insured hereunder bears to the contributory value."

"It is warranted by the Assured to report all shipments hereunder to the Importers and Exporters Insurance Co., within 48 hours after sailing of vessel (Sundays and Holidays not counting), or as soon thereafter as may be practicable."

1130

All other terms and conditions remaining unchanged.

THE IMPORTERS & EXPORTERS INS. CO. OF N. Y.

By THE TRANS MARINE
UNDERWRITING AGENCY, INC.,
W. TRAINOR.

May 4th, 1921.

ENDORSEMENT to be attached to and made part of Policy No. 1436 of the IMPORTERS & EXPORTERS INS. CO. 1131

Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that the following values shall apply to the within described policy on and after the above date.

Cigarette paper in books—invoice value.

Francs to be converted at 9¢.

1132 *Defendant's Exhibit C.*

All other terms and conditions remaining unchanged.

Signed THE IMPORTERS & EXPORTERS
INS. CO. OF N. Y.
By THE TRANS MARINE
UNDERWRITING AGENCY, INC.,
J. PIER, President.

RODGERS & CARR, INC.,
80 Maiden Lane,
1133 New York.

May 20th, 1921.

ENDORSEMENT to be attached to and made part of Policy No. 1436 of the IMPORTERS & EXPORTERS INS. Co.

Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that the following values shall apply to the within described policy on and after the above date:

1134 Cigarette Paper in Books—Invoice Value.

Francs to be converted at 9½¢.

All other terms and conditions remaining unchanged.

Signed THE IMPORTERS & EXPORTERS
INS. CO. OF N. Y.
By TRANS MARINE UNDERWRITING AGENCY, INC.,
W. TRAINOR.

RODGERS & CARR, INC.,
80 Maiden Lane,
New York.

Defendant's Exhibit C. 1135

July 18, 1921.

ENDORSEMENT to be attached to and made part of Policy No. 1436 of the IMPORTERS & EXPORTERS INSURANCE COMPANY.

Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that the following values shall apply to the within described policy on and after the above date: 1136

Cigarette Paper in Books—Invoice value Francs to be converted at 9 cents.

All other terms and conditions remaining unchanged.

Signed IMPORTERS & EXPORTERS
INS. CO. OF N. Y.
By TRANS MARINE UNDERWRITING AGENCY, INC.,
J. PIER, President.

RODGERS & CARR, INC.,
80 Maiden Lane,
New York City. 1137

September 19th, 1921.

ENDORSEMENT to be attached to and made part of Policy No. 1436 of the IMPORTERS & EXPORTERS INS. CO.

Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that the following values shall apply to the within described policy on and after the above date:

1138 *Defendant's Exhibit C.*

Cigarette Paper in Books—Invoice Value

Francs to be converted at 8 cents.

All other terms and conditions remaining unchanged.

Binding subject to our form of policy.

THE IMPORTERS & EXPORTERS INS. CO. OF N. Y.

By TRANS MARINE UNDERWRITING AGENCY, INC.,
1139 W. TRAINOR,
Asst. U'writer.

RODGERS & CARR, INC.,
80 Maiden Lane,
New York.

September 19th, 1921.

ENDORSEMENT to be attached to and made part of Policy No. 1436 of the IMPORTERS & EXPORTERS
1140 INS. CO.

Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that the following values shall apply to the within described policy on and after the above date:

Cigarette Paper in Books—Invoice Value

Francs to be converted at 8 cents.

All other terms and conditions remaining unchanged.

Defendant's Exhibit C. 1141

Binding subject to our form of policy.

THE IMPORTERS & EXPORTERS INS. CO. OF N. Y.
By THE TRANS MARINE UNDERWRITING AGENCY, INC.
Signed W. TRAINOR,
Asst. U'Writer.

RODGERS & CARR, INC.,
80 Maiden Lane,
New York.

1142

September 19th, 1921.

ENDORSEMENT TO BE ATTACHED TO AND MADE PART OF POLICY No. 1436 of the IMPORTERS & EXPORTERS INS. COMPANY.

Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that the following values shall apply to the within described policy on and after the above date:

Cigarette paper in books—invoice value

Francs to be converted at 8 cents. 1143

All other terms and conditions remaining unchanged.

Signed Binding subject to our form of policy.

THE IMPORTERS & EXPORTERS INS. CO. OF N. Y.
By THE TRANS MARINE UNDERWRITING AGENCY, INC.
W. TRAINOR,
Asst. U'writer.

RODGERS & CARR, INC.,
80 Maiden Lane,
New York.

1144 *Defendant's Exhibit C.*

TRANS MARINE UNDERWRITING AGENCY, INC.

New York, October 20, 1921.

Additional
Schedule of Rates.

Applicable to Policy No. 1436 of the Importers & Exporters Insurance Company for account of American Tobacco Company.

1145

Until further notice, the following rates will apply under this policy:

By Approved Steamers of Regular Lines From ports and/or interior places on the East Coast of the United States to Ports and/or Interior places on the West Coast of the United States not north of San Francisco.	Tobacco and/or Cigarette, Cigarettes and Paper in Boxes or paper in rolls and/or books in cases and/or supplies and/or machinery.	
1146	35¢	45¢

TRANS MARINE UNDERWRITING AGENCY, INC.,
MARINE MANAGER
47 BEAVER STREET
New York, November 19, 1921.

ENDORSEMENT attached to and forming part of Open Policy No. 1436 of the IMPORTERS AND EX-

Defendant's Exhibit C. 1147

PORTERS INSURANCE Co. issued to American Tobacco Company for $ on per
It is understood and agreed that as respects all shipments made by steamers sailing on and after October 20, 1921, this policy is extended to cover shipments of tobacco and/or cigarettes, paper and/or supplies, and/or machinery, and/or freight when prepaid, at and from ports and/or interior places on the East Coast of the United States to ports and/or interior places on the West Coast of the United States, not north of 1148
San Francisco, and subject to particular average if amounting to three percent (3%), each case and/or shipping package separately insured.

On Cigarette Paper in boxes and/or books it is agreed that these assurers are to pay a total loss on all packages which are damaged by sea perils in any way, and which the assured elect either to destroy or return to the shipper, it being further understood that the clause covering partial loss on duties does not apply to such goods.

It is also especially understood and agreed 1149
that on shipments of Cigarette Paper in boxes and/or boxes, the risk of fresh water damage is included to an amount not exceeding $2500, in any one loss, without regard to percentage.

All other terms and conditions unchanged.

RODGERS & CARR, INC.,
Brokers.

THE IMPORTERS & EXPORTERS INS. CO. OF N. Y.

By TRANS-MARINE UNDERWRITING AGENCY, INC.,
C. D. WEST, Vice President.

1150 *Defendant's Exhibit C.*

December 13, 1921.

ENDORSEMENT to be attached to and made a part of Policy No. 1436 of the IMPORTERS & EXPORTERS INS. Co.

Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that the following values shall apply to the within de-
1151 scribed policy on and after the above date:
Cigarette Paper in Books — Invoice Value

Francs to be converted at 9½ cents

All other Terms and Conditions remaining unchanged.

Signed
IMPORTERS & EXPORTERS INS. Co. OF N. Y.

BY THE TRANS-MARINE UNDERWRITING
AGENCY, INC.
1152 By W. TRAINOR.

FRANCIS C. CARR & Co. INC.
80 Maiden Lane,
New York City .

February 18th, 1922.

ENDORSEMENT to be attached to and made a part of Policy No. 1436, of the IMPORTERS & EXPORTERS INS. Co.

Defendant's Exhibit C. 1153

Issued To. American Tobacco Company

It is hereby understood and agreed that the following values shall apply to the within described policy on and after the above date:

Cigarette Paper in Books — Invoice Value

Francs to be converted at 10 cents.

All other terms and conditions remaining unchanged. 1154

Francis C. Carr & Co. Inc.
80 Maiden Lane,
New York City.

Signed The Importers & Exporters Ins. Co. of N. Y.

By The Trans Marine Underwriting Agency, Inc.
R. C. Rowe

1155

To be Signed by the Assured and Returned to
The Trans Marine Underwriting
Agency, Inc.
Marine Manager
47 Beaver Street,
New York April 3, 1922.

Endorsement attached to and forming part of Open Policy No. 1436 of the Importers & Exporters Insurance Co. Issued to The American Tobacco Co. for $ on per.

1156 *Defendant's Exhibit C.*

It is understood and agreed that as respects import shipments of cigarette paper, the following conditions will apply:

"Each case and/or shipping package subject to particular average if amounting to three percent (3%); including the risk of Fresh Water Damage, but not to exceed Twenty Five Hundred Dollars ($2500) on any one loss.

"On Cigarette Paper in books these assurers are to pay a total loss on all packages which are
1157 damaged and which the assured elect either to destroy or return to the shipper, it being further understood that the clause covering partial loss on duties does not apply to such goods.

THE IMPORTERS & EXPORTERS INS. CO. OF N. Y.

By TRANS-MARINE UNDERWRITING AGENCY, INC.
J. PIER, President.

All other terms and conditions remaining unchanged.

1158 FRANCIS C. CARR, INC. Brokers.

OPEN POLICY April 12th, 1922.

ENDORSEMENT to be attached to and made a part of Policy No. 1436 of the IMPORTERS & EXPORTERS INSURANCE COMPANY.
Issued to AMERICAN TOBACCO COMPANY.

It is hereby understood and agreed that on all shipments made under Bills of Lading dated on

Defendant's Exhibit C. 1159

and after April 11th valuations shall be as follows:

"Cigarette Paper in books — invoice value

Francs to be converted at 11¢.

Cigarette Paper in Reels or Bobbins — Invoice Value

Francs to be converted at 10½¢"

All other terms and conditions remaining unchanged. 1160

THE IMPORTERS & EXPORTERS INS. CO. OF N. Y.

By TRANS-MARINE UNDERWRITING AGENCY, INC.
Signed W. TRAINOR.

FRANCIS C. CARR & CO. INC.,—formerly
RODGERS & CARR, INC.
80 Maiden Lane
New York City.

1161

RESPONDENT'S EXHIBIT No. 1, May 17, 1922.

(Copy of French Line Freight Bill)

.....Voy..... Freight Dept. 8 Pearl St.
New York 19

French Line between Havre and
New York

Pier 57 North River foot 15th Street, N. Y.
Draw checks to order of Compagnie Generale Transatlantique.

1162 *Defendant's Exhibit C.*

M. .....
.....
To Compagnie Generale Transatlantique, Dr.
For Freight and Primage on Mdse.
From Havre .....
Charges advanced by this Co. in Europe on above .....
.....Marks.....
Fcs.....at.....$.....

1163 Goods not removed from Wharf within 5 days after ship's entry may at Company's option be sent into store, at Owner's risk and expense.

No Deduction Allowed. All Claims will be settled at the Company's Office.

Consignees are reminded that goods are at their risk for loss or damage by Flood, Fire, Water, Strikes or Boycott while on Dock or Bulkheads.

1164

Defendant's Exhibit C. 1165

SUPPLEMENTAL HEARING BEFORE THE UNITED STATES SHIPPING BOARD.

At New York, N. Y.,
May 12, 1925.

BEFORE THE UNITED STATES SHIPPING BOARD.

AMERICAN TOBACCO COMPANY,
Complainant,
against
COMPAGNIE GENERALE TRANSATLANTIQUE,
Respondent.

Docket No. 13. 1166

45 Broadway,
New York, N. Y., May 12, 1925.

10:00 A. M.

Before:

C. O. ARTHUR,
Examiner. 1167

APPEARANCES:

JONATHAN H. HOLMES, 111 Fifth Ave., New York, Attorney for Complainant.

JUNIUS PARKER, 111 Fifth Ave., New York, for Complainant.

CLINTON ROBB, Transportation Building, Washington, D. C., for Complainant.

JOSEPH P. NOLAN, 25 Broad Street, New York, Attorney for Respondent.

1168 *Defendant's Exhibit C.*

PROCEEDINGS.

Examiner Arthur: Gentlemen, please come to order. The Board has set down at this time and place supplemental hearing in Docket No. 13, American Tobacco Company versus Compagnie Generale Transatlantique.

The report of the Board in the original hearing in this case, decided July 17, 1923, found that during the period of April 7, 1919, to January 3,
1169 1921, there were carried for the account of the complainant, American Tobacco Company, by the French Line, the respondent, from Bordeaux and Havre to New York, 279 shipments of cigarette papers in books and cigarette papers in bobbins, for which service freight charges in the total sum of $99,755.47 were collected upon delivery at destination. These charges were calculated upon a fixed basis of five francs to the dollar to New York; and the charges on prepaid shipments of identical commodities carried for other of the carrier's patrons from Bordeaux
1170 and Havre to New York during the same period, and in many instances upon the same vessel, were accepted in France in francs at the current rate of exchange. As a result, the Board found that the complainant paid more than its competitors for transportation of the same character of commodity from and to the same ports.

From the facts thus stated and the evidence of record as a whole, the Board concluded and decided that the charges collected from complainant were unduly prejudicial to the complainant, unduly preferential of its competitors, and un-

1171

justly discriminatory between shippers, in violation of Sections 16 and 17 of the Shipping Act to the extent which they exceeded the prepaid charges on like shipments from and to the same ports, plus such additional costs as the respondent was compelled to absorb over and above those accruing in connection with prepaid shipments. The Board further found and concluded that the record in the original hearing did not afford a basis for finding the extent, if any, to which the complainant has been injured, and the same case 1172
was assigned for further hearing in respect to any such injury and the amount of reparation to which the complainant may be entitled.

The purpose of this supplemental hearing, therefore is, first, to determine whether in fact the complainant was injured within the meaning of Section 22 of the Shipping Act; and second, if injured, the pecuniary amount of such injury.

Gentlemen, do you understand that that states the issues?

Mr. Holmes: Yes, sir, that states them.

Mr. Nolan: On behalf of the respondent, I 1173
understand that is the issue. May I ask that I be permitted to make such preliminary objections to the further hearing as I am advised?

Examiner Arthur: Surely.

Mr. Nolan: On behalf of the respondent, I object to any further hearings, upon the ground that there has been a full and a fair hearing in this matter over objection of the defendant as to the jurisdiction of the court and as part of this objection I repeat each and every objection to jurisdiction and all the preliminary objections

1174 *Defendant's Exhibit C.*

that were made at the previous hearing, upon the ground that the court has failed, both in the preliminary hearing and on the statement of facts here, to take into consideration the circumstances of the making of the contract between the complainant or petitioner and the respondent, and the fact that all such contracts were made in a foreign country. The respondent appears here for the purpose of this hearing, after stating this objection, but without waiving its
1175 rights to repeat all the preliminary objections and this objection on appeal or otherwise.

Examiner Arthur: The objections of the counsel for the respondent carrier are noted. The complainant will proceed.

Mr. Holmes: Mr. Scully, will you take the stand?

1176 Joseph V. Scully, called as a witness on behalf of the complainant being duly sworn, testified as follows:

Direct Examination by Mr. Holmes:

Q. Will you state your full name and address? A. Joseph V. Scully, 1822 McGraw Avenue, Bronx.

Q. What is your occupation? A. Supervisor of the Import Letter of Credit Department.

Q. Of what company? A. The Equitable Trust Company of New York, 37 Wall Street.

Defendant's Exhibit C. 1177

Q. I will show you a copy of Exhibit B, stipulation in this case, which is to show the shipments of cigarette books or cigarette paper to certain consignees. I have already sent you an excerpt from that which shows the shipments to the Equitable Trust Company or consigned to the Equitable Trust Company. This refers to the period from March 8, 1919, to January 3, 1921. I think this list may be checked with the exhibits so that we may refer to the list that I have sent you, Mr. Scully, for convenience. I 1178
want to prove by that that all these shipments to the Equitable Trust Company were to the Equitable Trust Company for the account of R. J. Reynolds Tobacco Company, to be delivered to the R. J. Reynolds Tobacco Company, and that they were cigarette papers in bobbins.

Mr. Nolan: This man does not know that. I will put it on the record that all the consignments as appearing on this Exhibit B were not for the consignment of the Equitable Trust Company but only 1179
for the R. J. Reynolds Company.

Mr. Holmes: He has a record which shows what they are.

Mr. Nolan: You cannot prove it by the record of his. Respondent's counsel will stipulate that all of the items shown on Exhibit B in which the Equitable Trust Company appeared as consignee were items intended for R. J. Reynolds Company, and that the Equitable Trust Company was merely the banker in the transaction and not the consignee.

1180 *Defendant's Exhibit C.*

Examiner Arthur: That disposes of the one purpose.

Mr. Holmes: Yes. The other purpose is to show what is the character of this paper,—whether it was cigarette paper in bobbins which is used in a machine to make cigarettes, or whether it was books, that is, cigarette books. Now, I can show that readily in another way, but I would like to have this witness testify to the

1181 questions.

Examiner Arthur: If this witness knows he may testify.

Mr. Holmes: We will see what he does know about it. As to these shipments consigned to the Equitable Trust Company, which it has been stipulated were for the account of R. J. Reynolds Tobacco Company—

Mr. Nolan: I take it on your word that that is what they are for.

Mr. Holmes: Yes, we have a letter from

1182 the General Counsel.

Q. Do you know what they were?

Mr. Nolan: That is objected to as calling for a conclusion, and I ask that I be permitted to cross-examine him before he answers. I don't care whether he is President of the company or Chief of the Import Department. How does he know what they are, whether copied from the books or a paper that he has read somewhere?

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Examiner Arthur: Ask him how he arrives at his knowledge of what they were. Let the record show how he bases his knowledge, one way or another.

Mr. Holmes: Mr. Arthur, the machinery of importing this seems to have been done by the Equitable Trust Company, so naturally their books and records do not show what it was they are importing, so I thought as a matter of order I would like to ask him first whether he knew.

1184

Examiner Arthur: As I understand it, Mr. Nolan objects on the principle that this gentleman has not physically handled the shipments?

Mr. Nolan: Correct. He cannot have personal knowledge any more than a clerk in my office.

Mr. Holmes: We don't know whether he has.

Mr. Nolan: Then ask him without calling for a conclusion. Ask him what he knows about that, and not on this particular account.

1185

(Question repeated by stenographer, as follows: "As to these shipments consigned to the Equitable Trust Company, which it has been stipulated were for the account of R. J. Reynolds Tobacco Company, do you know what they were"?)

Mr. Nolan: Objected to as calling for a conclusion.

Examiner Arthur: That is objected to as calling for conclusion and objection is

1186 *Defendant's Exhibit C.*

sustained, objection having been due to the witness, being a banker, did not physically handle the shipments and has not first-hand, specific information as to what the nature of the shipments were.

Mr. Nolan: I am not limiting it to that one objection, because I object on the ground that it calls for a conclusion.

Mr. Holmes: (To witness) Can you tell what the Equitable Trust Company did in
1187 regard to the matter of importation of the shipments mentioned on Schedule B?

Mr. Nolan: Of your own personal knowledge. I ask that the question be so amended so as to avoid my making further objection.

Examiner Arthur: It seems that the question was very fairly put. The witness may answer.

Mr. Nolan: Objected to on the ground that it calls for hearsay, unless the witness states it as of his own personal
1188 knowledge.

Mr. Holmes: May I say here—

Examiner Arthur: Of course, we have no jury here to be misled, but we try, in so far as it is practicable, to confine the evidence within reasonable limits.

Mr. Robb: Mr. Examiner, lest we forget the character of this proceeding, etc— I assume that these proceedings are like those of the Interstate Commerce Commission?

Examiner Arthur: Yes, sir.

Defendant's Exhibit C. 1189

Mr. Robb: And that any ruling by the Interstate Commerce Commission has a technical and persuasive force here. Now, it so happens that the Supreme Court of the United States, in considering cases that have been appealed from the Interstate Commerce Commission, has passed upon this very question; and with your permission I will read briefly from one of those decisions. I now quote from Interstate Commerce Commission against Baird, 1190
194 U. S. 35:

"The inquiry of a Board of the character of the Interstate Commerce Commission should not be too narrowly contained by technical rules as to the admissibility of proof. Its function is largely one of investigation, and it should not be hampered in making inquiry pertaining to Interstate Commerce by those narrow rules which prevail in trials at common law where a strict correspondence is required between allegation and proof. 1191
Commission is an administrative body and, even where it acts in a quasi-judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties."

Examiner Arthur: That and several other cases are, of course, in the knowledge of the examiner. As I have said, we have no jury here to be misled; and within reasonable limits, I am disposed to be liberal in the admission of testimony. It must be seen by counsel, however, that

1192 *Defendant's Exhibit C.*

they may not wander too far afield. The issues in this proceeding seems to me to be rather definitely stated; and counsel should strive, for the benefit of the Board, to refrain from departing any more than is absolutely necessary from the rules of evidence which would obtain in a court procedure.

Mr. Nolan: May I suggest to the examiner that here is an attempt by the
1193 petitioner to prove by a banker the nature of certain goods, the evidence of which is in his own possession or in the possession of the client, and it is the evidence of a banker without producing the records of his own client to establish to the court the class of goods upon which he seeks an indemnity. I thoroughly agree with the Supreme Court of the United States in the Baird case and in plenty other cases, the same as in admiralty and equity, that where there is no jury and where the
1194 court is merely seeking to find the facts, there should be a liberal interpretation of the method of producing evidence; but when a petition involving a large sum of money as damages comes into court, and in place of producing his own client and his own client's books, he attempts by purely hearsay evidence to prove the nature of the goods upon which damage is fixed, I think that the rule laid down by the Supreme Court of the United States is violated.

Defendant's Exhibit C.

Mr. Holmes: This is not a client; it is the complainant's competitor, and it would be quite easy to bring the competitor here to prove the case.

Examiner Arthur: The examiner has already ruled that the witness may answer.

Mr. Nolan: Exception.

Mr. Holmes: Is that question clear? (To witness.)

1195

A. At the request of the R. J. Reynolds Tobacco Company, the Equitable Trust Company of New York issued various import commercial letters of credit to finance the importation of cigarette paper in bobbins or in large rolls; and under these credits various payments were made abroad on presentation of our shipping documents, and from the invoices attached to the shipping documents these payments were made. The shipping documents are then forwarded to the Equitable Trust Company in New York, who delivered same to C. B. Richards & Co. as forwarding agents for the R. J. Reynolds Tobacco Company.

1196

1197

Mr. Holmes: Was that practice followed with respect to those items on Exhibit B of which you have a copy in a list?

Mr. Nolan: Same objection to each of these questions. Same ruling and same objection.

A. At that time this practice was followed out.

1198 *Defendant's Exhibit C.*

Q. As to these items, can you say whether all of them were for the account of the R. J. Reynolds Tobacco Company?

Mr. Nolan: Same objection, ruling and exception.

A. All we have not been able to identify as for the account of the R. J. Reynolds Tobacco Company.

1199 Q. When you say "all"— A. There are a few shipments we have not been able to identify.

Q. Have you the list which you did identify? A. Yes, this is the list.

Mr. Holmes: Mr. Nolan, I have a letter here from the General Counsel of the R. J. Reynolds Tobacco Company. Perhaps under your objection you would not be willing to put in that list.

1200 Mr. Nolan: I am in a queer position now. I asked you whether or not your statement was correct that those were consigned to R. J. Reynolds Company, and on that I made the stipulation. Your own witness, in the face of your agreement with me, has testified that he cannot identify them all. I now ask that my stipulation be withdrawn, based on Mr. Holmes statement as one Counsel to another. It turns out it is not correct.

Mr. Holmes: There are a few of these items, Mr. Nolan, that they simply have not touched.

Defendant's Exhibit C. 1201

Mr. Nolan: He should not come in and make stipulations unless they were checked.

Mr. Holmes: I will get that to you.

Mr. Nolan: I will not admit it until I have an opportunity to correct it. I would like to check it and consult with the counsel of the R. J. Reynolds Company and witnesses if necessary.

Mr. Holmes: Mr. Scully, will you check on this Exhibit B and read off which ones 1202
of those items you have checked as being for the account of R. J. Reynolds Tobacco Company?

Mr. Nolan: Same objection, ruling and exceptions.

Examiner Arthur: Exceptions noted. The witness will clearly specify the checks which he makes on the exhibit in order that the record will show.

Mr. Holmes: Can he make a check alongside of the items?

Mr. Nolan: No; let him call them out, 1203
Exhibit B, to tell what they are.

Examiner Arthur: He can check them and then read them at the same time they appear on the record.

Mr. Holmes: Will you call out those which you have checked?

A. The record of the Equitable Trust Company indicates that they received on the Steamship NIAGARA, March 4, 1919, bills of lading covering 410 cases, 110 cases, and 100 cases of cigarette papers.

1204 *Defendant's Exhibit C.*

Q. For the R. J. Reynolds Tobacco Company? A. For the account of the R. J. Reynolds Tobacco Company.

Mr. Nolan: Does that appear on Exhibit B?

Mr. Holmes: On Exhibit B of the Equitable Trust Company.

Mr. Nolan: All right; strike my question out.

1205 A. The documents were received on May 17, 1919, covering shipments of 415 cases on the Steamship Chicago.

Q. One moment. Can you state as you go along whether they were bobbins or whether they were otherwise in large rolls?

Mr. Nolan: Same objection, ruling and exception.

Mr. Holmes: All right; disregard that.

A. Documents received on May, 26, 1919, covering the following shipments on the Steamship
1206 Hudson: 136 cases, 100 cases, 163 cases, 330 cases, 195 cases, 110 cases, and 340 cases. Documents received on May 9, 1919, covering the following shipments on the Steamship Chicago: 110 cases, 17 cases, 50 cases, 400 cases, 350 cases, 186 cases, and 933 cases. The following documents were received on August 11, 1919, on the Steamship Chicago: 70 cases.

Q. Suit your convenience.

Mr. Nolan: Just as a matter of record, as you check them off on Exhibit B, are you also checking them off on your own

Defendant's Exhibit C. 1207

list? So that we can refer to both of them later on cross examination.

A. On October 21, 1919, documents covering 82 cases on the Steamship Chicago were received. On December 12, 1919, documents were received which we believe cover the following shipments on the Steamship Andre—our records are not clear on the name of the steamer: 75 cases, 70 cases, 80 cases, 70 cases, 70 cases, and 70 cases. On December 22, documents covering 145 cases on the Steamship Chicago were received. On January 29, 1920, the following documents on the Steamship Niagara were received: 70 cases, 75, 75, 67, 75, 75, 150, 75, and 75. On March 15, 1920, we issued letters of guaranty to the Collector of Customs of the Port of New York and Delivery Clerk of the Steamship Frankinver covering the following cases: 75, 75, 75, and 75. On April 28, 1920, we received documents covering 360 cases on the Steamship Niagara. Referring to Exhibit B, the 360 is made up of 75, 110, and 175 cases. 1208 1209

Mr. Nolan: It appears on your list as a straight invoice of 360?

A. 360 cases. On the Steamship Strathborne documents were received covering 80 cases. The date is unknown.

Mr. Nolan: What is the date on Exhibit B?

A. It is June 28, 1920.

1210 *Defendant's Exhibit C.*

Mr. Nolan: Do your records show any date at all?

A. No, sir.

Mr. Nolan: So far as your records are concerned, it might have been in 1916 or 1922, then? As far as your records indicate, it might have been in 1916 or 1922?

1211 A. As far as the records before me indicate, it is possible. So far as the records in the office indicate, it was during the year 1920.

Mr. Nolan: Did you make the particular record from which you have been reading?

A. No, sir; it was made under my supervision.

Mr. Nolan: Did you check it up afterwards?

1212 A. Not from the original record.

Mr. Nolan: As far as the record goes, I repeat my question again, that the Strathborne might have been 1916 or 1922?

A. From this record, it is possible.

Mr. Nolan: All right.

Mr. Holmes: Mr. Witness, there are only a few more to look up. You may

Defendant's Exhibit C.

1213

disregard those. As I understand it, these were all for the account of the R. J. Reynolds Tobacco Company?

A. Yes.

Mr. Nolan: Same objection, ruling and exception.

Mr. Holmes: And according to your record, the cigarette paper was in bobbins or in bulk?

1214

A. Yes.

Mr. Holmes: I would like to say just one word. It did not occur to me at any time that it was important whether all these were proved or substantially, or 90 per cent. or 95 per cent or all. As far as my conception of the case is concerned, if we prove the importations of the competitor to a considerable quantity, that was sufficient. I had overlooked the fact that in my letter from S. Clay Williams of R. J. Reynolds Tobacco Company he had said to me that there were a few of these shipments that had not been identified. So that I inadvertently, and as I think the matter is of no consequence, I said to Mr. Nolan it was agreed that all these shipments were for R. J. Reynolds Tobacco Company, which I don't doubt is the fact, although they were not all checked. It occurred to me that while I

1215

1216 *Defendant's Exhibit C.*

have no resentment about it, Mr. Nolan's criticism was rather sharp and might indicate on the record, although it did not to me expressly, that he intended to infer that I had gotten a stipulation by means of a statement which was incorrect. And I state this on the record as a fact; and if Mr. Nolan desires to confirm it or not,—

Mr. Nolan: I don't intend to impute
1217 bad faith in any way whatsoever to Mr. Holmes, because you know I could not do that to you, because you are too charming and too nice a gentleman.

Mr. Holmes: I had no feeling about it, but I was afraid the record might indicate something not intended.

Mr. Nolan: But at the same time, I don't think that I should be bound by a stipulation as now develops, because of a quite evident mistake I entered into, because you yourself made the suggestion
1218 upon which I made a stipulation. I think you should be required to go to the most accurate proof of every item now, and my stipulation should be withdrawn; but I repeat that the last thought in my mind could be the imputation of bad faith to your good self.

Mr. Holmes: I understood that entirely, but I think it should appear in the record.

Mr. Nolan: I should be glad to have the whole colloquy taken off the record.

Examiner Arthur: The stipulation, of course,—that part of it,— has been. Mr.

Nolan, counsel for the respondent, has withdrawn his agreement to the stipulation.

Mr. Nolan: If you will put it, with the consent of the court it is withdrawn; because I don't want an inference on the record that I have broken a promise.

Examiner Arthur: The record will show the reason it is withdrawn.

Mr. Holmes: Perhaps it would be well for the record to remain as it is. That 1220
would satisfy me.

Examiner Arthur: I think the record speaks of the instance very well.

Mr. Holmes: (To witness.) Do you recall that the Equitable Trust Company ever imported during the period from March, 1919, to January, 1921, cigarette paper or cigarette books for the account of any one else other than R. J. Reynolds Tobacco Company?

A. Not to my knowledge. 1221

Mr. Holmes: That is all.

Examiner Arthur: Cross examination.

Cross Examination by Mr. Nolan:

Q. Just a minute, Mr. Examiner. May I have Exhibit B? During exactly what period did you check up as to all these importations made by the Equitable Trust Company for the account of others than yourself? A. For the account of others?

1222 *Defendant's Exhibit C.*

By Mr. Holmes:

Q. What you have testified to is not for the Equitable Trust Company, was it? A. No, sir.

Q. For other people? A. Yes.

Q. During what period did your check-up cover? What period of time did you check it up as shown by your list here? A. Do you mean the importations for the account of Reynolds?

1223 Examiner Arthur: That in the gathering of this information, over what period of time did you go in order to obtain it? In order to obtain that information, you went over the records of the Equitable Trust Company for a certain period of time, and the counsel asks what was that period of time?

By Mr. Nolan:

Q. Do you know without looking at the memorandum? Do you recall what period of time it was? A. About 1918 to 1921.

1224 Q. Did you do the work yourself? A. Some of it.

Q. What did you use as your basis of starting in your investigation of checking? A. The sheet furnished to us by the American Tobacco Company showing the various importations, the name of the Equitable Trust Company.

Q. Was it a sheet like this or a separate sheet? A. A separate sheet.

Examiner Arthur: Identify that. Referring to Exhibit B, it was a separate sheet?

1225

A. It was.

By Mr. Nolan:

Q. Who in the American Tobacco Company took the matter up with you? A. I had no direct correspondence myself with anyone from the American Tobacco Company.

Q. Who in the Equitable Trust Company gave you your instructions to do this checking up? A. Mr. Caine, the Assistant Manager of the Foreign Department.

1226

Q. What instructions did he give you, Mr. Scully? A. To comply with the request of the American Tobacco Company.

Q. Was that request in writing? A. It was.

Q. Have you got a copy of it here? A. No, sir, I have not.

Q. Will you get that and produce it later? During the period covered by your checking up—that is, from December 22, 1919, down to—I guess this is the 4th of May, 1919, is it not, Mr. Holmes?

1227

Mr. Holmes: That is the fourth, I suppose.

Mr. Nolan: 4th of June?

Mr. Holmes: I guess it is the 6th of May. It depends upon how the French—

Mr. Nolan: Tell us the exact period of time as shown on your report from the first check you made to the last check.

A. Referring to the record, the first documents were received on March 4, 1919; and the

1228 *Defendant's Exhibit C.*

last set of documents, the records indicate, were received on April 28, 1920.

Q. Now, during that period of time, what was your position with the Equitable? A. At that time I was a clerk in the Import Letter of Credit Department.

Q. Who was the man in charge of that particular department during that period of time? A. Mr. Charles Caine, Jr., was the supervisor of the Import Letter of Credit Department.

1229 Q. Was he your immediate superior? A. He was.

Q. And when letters of credit were issued for American concerns for purchases abroad, he handled that business with them, did he? A. He did.

Q. What were your particular duties? A. My particular duties at that time were the examination of documents presented, and the letters of credit, and the notifying and delivering of documents to our customers and securing reimbursements for the payments made by us.

1230 Q. Take the first item which you have on the list which you produced here today. When a letter of credit was arranged, that would be arranged by the customer in New York with Mr. Caine, Jr.? A. Not necessarily; through any of the officers of the institute.

Q. And it would come to the department of which Mr. Caine was head? A. Yes.

Q. And that would be mailed to the other side or cabled? A. Either way.

Q. Would the documents affected in that particular shipment show whether the money was

1231

for the purpose of paying for freight in advance or for the purpose of paying for the goods themselves? A. The documents taken up showed both. They showed the amount; in other words, the invoice value of the merchandise, and also showed the amount of freight and expenses incurerd in connection with the shipments.

Q. And it would show the nature of the merchandise itself? A. Some of the documents may show whether the merchandise consisted of bobbins or rolls.

1232

Q. As a matter of fact, would not a copy of the bill of lading be part of the documents? A. Yes, sir.

Q. And the consular invoice would be a part of the documents, and the consular invoice and bill of lading would show the nature of the goods? A. To the extent that it was cases of cigarette paper.

Q. And the value of the goods? A. Yes.

Q. And the amount of freight paid? A. Possibly. Oftentimes it was simply marked "freight prepaid", which was a very common practice.

1233

Q. Do you mean to say that any bill of lading that has come through your hands in all the years you have been in the Equitable Trust Company would be marked "freight prepaid" without showing the amount of the freight? A. Yes.

Q. Would you say that in one of these particular shipments just having the mark "freight prepaid"? A. I could not say.

Q. And as an experienced banker, you say you have seen bills of lading come through merely marked "freight prepaid" without showing the amount of the freight? A. Yes, sir.

1234 *Defendant's Exhibit C.*

Q. Don't you know as a matter of fact, Mr. Scully, that the weight of the goods and the class of goods and the value of the goods are all endorsed on bills of lading with the rate of freight paid? A. It may be supposed to be, but I have seen instances where the notation did not show the amount paid.

Q. After the Equitable Trust Company handled a transaction, take that first transaction that you have testified to—Steamship Niagara, 3-4-19,
1235 that means March 4, 1919—does that mean March 4, 1919, from the European port of shipment or on delivery? A. That means the date the documents were received by us in New York.

Q. When the Equitable Trust Company received those documents, what would you say would be included in the documents? A. The bills of lading, consular invoices, and the invoices. Oftentimes the statement of the Reynolds agent abroad showing the amount of expenses and also the freight.

Q. And where the Equitable Trust Company
1236 received those, they were received in duplicate or triplicate? A. In duplicate.

Q. And one copy was kept in the Equitable? A. All the documents received by us were turned over to C. B. Richards & Co. The bills of lading were endorsed to the R. J. Reynolds Tobacco Company.

Q. And the Equitable kept no copy of the invoice? A. No, sir.

Q. No copy of the statement of Reynolds? A. No, sir.

Q. No copy of the bill of lading? A. No, sir.

Q. When the Equitable delivered those to C. B.

Richards & Co., what sort of receipt or document did he receive back? A. Usually an acknowledgement sheet.

Q. Was that letter kept in the files of the Equitable? A. Yes, sir.

Q. And when the entries were made on the books of the Equitable showing the satisfaction of the letter of credit and the receipt of the documents themselves, in what books of the Equitable would such entry be made? A. The import Letter of Credit documentary ledger sheets. 1238

Q. Take the import letter of credit: what rate as to the transaction would appear on that? A. On the original letter of credit itself, which is forwarded abroad and in the possession of the shipper, the amount of each payment would be noted on the reverse side thereof.

Q. What record would the Equitable have to show what the letter of credit was issued for? A. The copy of the original credit itself.

Q. That would be based on the verbal transaction made in New York or on a written transaction? A. Always a written transaction. 1239

Q. Then the Equitable would have in its possession also the terms of the original transaction on which the letter of credit was used, would it not? A. Yes, sir.

Q. Then in turn don't you keep a ledger which would show the kind of goods for which the Equitable was charged as a consignee? A. It shows each shipment and the kind of merchandise.

Q. That would be the record of the Equitable Trust Company on its books? A. Yes, sir.

Q. Were C. B. Richards & Co. the agents of

1240 *Defendant's Exhibit C.*

Reynolds in negotiating these transactions for the Equitable? A. No, sir, to my knowledge they were merely the forwarding agent who dealt with the Custom House.

Q. That is when you got the bills of lading without sending them to Richards to have them clear them at the Custom House? A. Yes, sir; we did not give Richards any instructions what to do with them.

Q. You merely turned the papers over to Rich-
1241 ards? A. Just gave them the bills of lading without instructions.

Q. And you kept no copies of the original invoices? A. No, sir.

Q. Who is the man who did the checking up under your instructions from which you made the lists that you have used in testifying here? A. Mr. Rueda.

Q. Is he still with the Equitable? A. Yes, sir.

Q. And after he made up the list, did you personal check that all up? A. No, sir.

Q. Did you hand him the letter from the Amer-
1242 ican Tobacco Company and tell him to make the list? A. Upon receipt of the letter from the American Tobacco Company, I told him where he could find the old records, which he did, and he showed me what he had gotten from the warehouse, and I personally checked some of the records myself and located some of the shipments as indicated from the sheet furnished us by the American Tobacco Company. I then turned the entire work over to Mr. Rueda and asked him to finish it, which he did, and made the final list, which I did not re-check.

Defendant's Exhibit C.

Examiner Arthur: Never mind. You testified that this exhibit, which is Exhibit B of this present supplemental hearing, was made by you or under your immediate direction?

A. Yes, sir.

By Mr. Nolan:

Q. And in making it, having it made under your immediate direction, you did not examine each and every shipment for the purpose of finding the exact class of goods covered by the shipment, did you? A. Further than cases of cigarette paper, we did not.

Q. That is all. Now, I move to strike out the entire testimony of the witness on the ground that it is not the best evidence and it appears from his testimony that the basis of the evidence is obtained in written documents.

Examiner Arthur: The motion is denied and will appear of record as being denied.

Mr. Nolan: Exception.

Examiner Arthur: Exception noted.

Mr. Holmes: That is all.

Mr. Nolan: Pardon me, is that on Exhibit E? If that is the exhibit your honor has referred to, here is Exhibit B. I want to ask some question about this. Referring to the memorandum which you have used for the purpose of testifying here, are you able, without referring to that particular document made by your assistant under

1246 *Defendant's Exhibit C.*

your direction, to testify as to these shipments?

A. In what respect?

Q. As to the nature of them, the dates of them, the amounts of them. A. No, not without the memorandum.

Mr. Nolan: I object as incompetent and not the best evidence.

Examiner Arthur: The witness has no
1247 reason to believe that there is in this exhibit anything other than appears upon its face. That is an itemized list of shipments about which he has general information?

A. Yes, sir.

Mr. Holmes: This can readily be checked with Exhibit B, of course.

Examiner Arthur: You see, Mr. Holmes, this exhibit having been submitted by the witness at this supplemental hearing, must
1248 be treated separately from Exhibit B submitted by another witness, I understand, at the original hearing.

Mr. Holmes: But he says he has not checked it, as I understand it, with the Exhibit B, but it can readily be checked with Exhibit B.

Mr. Nolan: But it is not the best evidence, Mr. Examiner. I can take a typewriter and take Exhibit B and have a stenographer type anything he wants on it. The original records are those in the Equitable Trust Company.

1249

Mr. Holmes: Do I understand the objection is that he did not check his records with Exhibit B?

Mr. Nolan: I object, first, as incompetent knowledge; second, not the best evidence; third, not being a proper ground upon which to base a particular movement.

Examiner Arthur: Objections are noted. I merely want to make clear on the record that there are involved two exhibits, coming from two different witnesses.

1250

Mr. Nolan: May I have an exception noted?

Examiner Arthur: Exception is noted, yes.

Mr. Nolan: (To Mr. Holmes.) The second part is what you sent him to use as a guide. The two first pages are his original, and certainly your additional data could not be part of an exhibit.

Examiner Arthur: The witness is excused. The complainant will proceed.

Mr. Junius Parker: Mr. Examiner, I have not yet appeared in the case, but I would ask permission to appear.

1251

Examiner Arthur: Certainly. Will you please identify yourself for the record?

Mr. Parker: Junius Parker. I am with Mr. Holmes.

Examiner Arthur: Whom do you represent?

Mr. Parker: I am General Counsel for the American Tobacco Co., Mr. Hill, will you take the stand?

1252 *Defendant's Exhibit C.*

PERCIVAL S. HILL, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct Examination by Mr. Parker:

Q. What is your name and address? A. Percival S. Hill, 863 Park Avenue, New York.

Q. Business address? A. 111 Fifth Ave.

Q. What is your connection with the American Tobacco Co.? A. I am its President.

1253 Q. How long have you been its President? A. Since 1912.

Q. During the period beginning January, 1919, and ending January, 1921, did the American Tobacco Company import from France cigarette paper? A. Yes, sir.

Q. Were these importations of books or bobbins and reels or both? A. Both.

Q. A reel of paper, Mr. Hill, is used for what purpose by the American Tobacco Company? A. To manufacture cigarettes.

Q. Book paper is imported by the American
1254 Tobacco Co. for what purpose? A. For sale to dealers.

Q. And by dealers is sold to consumers? A. Yes, sir.

Q. And by consumers used for what purpose? A. Rolling tobacco in the shape of a cigarette.

Q. That is, rolling their own? A. Yes.

Q. In your importation of cigarette paper, that is, in the importation by the American Tobacco Co., what ocean carrier during this period served you? A. The French Line.

Q. Do your duties as President of the American Tobacco Co. cause you to be familiar with

1255

the various products of the company and their costs and selling prices?

Mr. Nolan: That is objected to as calling for a conclusion.

Examiner Arthur: The witness has testified that he knows.

Mr. Nolan: Not yet, he has not.

Examiner Arthur: May I hear that question?

(Question repeated by Stenographer.)

1256

Examiner Arthur: Counsel objects.

Mr. Nolan: As calling for a conclusion.

Examiner Arthur: Objection overruled.

Mr. Nolan: Exception.

Examiner Arthur: Exception is noted.

Mr. Hill: (Answering question.) Yes.

Q. Are you and have you been familiar or unfamiliar with market conditions under which manufactured cigarettes and cigarette books are sold? A. I am and have been.

1257

Mr. Nolan: May I have the same objection and ruling, just to protect our legal rights?

Examiner Arthur: Surely.

Q. In the sale of cigarettes and of cigarette books, is the American Tobacco Company monopolistic or is it in competition with others?

Mr. Nolan: That is objected to as calling for a conclusion and having nothing to do with the issues in this case.

1258 *Defendant's Exhibit C.*

Examiner Arthur: It is quite material whether the American Tobacco Company in the selling of its products meets competition with other cigarette manufacturers. The Examiner will permit the witness to answer.

Mr. Nolan: Might I say, sir, before you do permit the witness to answer, I don't care what kind of a case it is, if those general questions are allowed without laying a foundation for it, any man at all with a
1259 particular or technical knowledge of one class of business can come in automatically and testify to anything in general conclusions, on which there is no possible opportunity for the opposing side to open up a question. There are these orderly forms of procedure. I admit there is a liberal spirit in a trial of this kind of cases that does not obtain in other cases, but I think it is manifestly unfair to permit the head of an organization to come in and ask these gen-
1260 eral questions—my company is not monopolistic—that or the other kind. I think the respondent is seriously prejudiced by this kind of testimony.

Examiner Arthur: The counsel's objections to the witness's testimony appears of record. The objection is overruled.

Mr. Nolan: May I have an exception?

Examiner Arthur: Exception noted.

(Question repeated by stenographer.)

A. It is in competition with other manufacturers.

Defendant's Exhibit C. 1261

Q. You mean, so far as cigarettes are concerned? A. Also cigarette books.

Q. The American Tobacco Company is not a manufacturer of cigarette books, is it? A. No but in the sale it is; I mean, in the sale it is in competition.

Mr. Nolan: So as to save time, I move the same objection, ruling and exception in this entire line.

Q. I refer in all of my questions, Mr. Hill, to 1262
the period which I have indicated in an earlier question, to wit, generally speaking, from January, 1919, to January, 1921, With what competitors do the American Tobacco Company come in competition with respect to the sale of cigarettes? A. By name shall I mention?

Q. Yes. A. Liggett & Meyers, R. J. Reynolds Tobacco Company, Pierre Lorillard & Company, and as a matter of fact with numerous other smaller manufacturers.

Q. With what concerns in the period in question was the American Tobacco Co. in competi- 1263
tion so far as the sale of cigarette books is concerned? A. Liggett & Meyers and the R. J. Reynolds Tobacco Company.

Q. I said cigarette books, Mr. Hill. A. I so understood it.

Q. Was the R. J. Reynolds Tobacco Company engaged at that time in the sale of books? A. I thought they were; that was my recollection. Liggett & Meyers certainly were.

Q. How about Surbrug? A. They were among the principal ones in the cigarette book field. They are now out of business.

1264 *Defendant's Exhibit C.*

Q. Surbrug was a subsidiary of the Tobacco Products Corporation? A. Yes.

Q. Do you know the source of supply of the cigarette paper used in the manufacture of cigarettes by the competitors of the American Tobacco Co.? A. Well, I would not say all of the competitors, but the supply of cigarette paper for Liggett & Meyers and R. J. Reynolds comes from France.

Q. Do you know the source of supply of com-
1265 petitors of the American Tobacco Co. in the sale of books, to wit, Liggett & Meyers and Surbrug or Tobacco Products Co.? A. Also from France.

Q. Is the sale of the competing products, whether books or cigarettes, in the same territory and markets as the sale of American tobacco products in books and paper ? A. Yes, sir.

Q. What are those markets principally? A. Practically the entire United States.

Q. What, if you know, is the character of competition between the products of the companies which you have mentioned? That is to say, was
1266 it desultory or keen?

Mr. Nolan: Same objection, and also as calling for a comparison.

Examiner Arthur: Objection is noted, but the witness may answer.

Mr. Nolan: May I have an exception?

Examiner Arthur: Noted.

A. The competition was very keen.

Q. Whose duty is it in the organization of the American Tobacco Company to determine the prices at which its products are to go to dealers?

1267

Mr. Nolan: Objected to as incompetent and not within the issues, and calling for a conclusion; and may I have the exceptions noted also?

A. It is my duty to finally pass on the prices at which goods shall be sold.

Q. In the condition which you have described—and you will understand that all of these questions refer to the period mentioned—what circumstance is the limiting or controlling one in the fixing of a price?

1268

Mr. Nolan: Same objection, ruling and exception.

A. The price is made by our competitors.

Q. To elucidate, Mr. Hill, your testimony, what was in the period in question, so far as volume of business is concerned, the leading brand of cigarettes sold by the American Tobacco Company? A. Our principal brand was Lucky Strike. Liggett & Meyers most competitive brand was Chesterfield. R. J. Reynolds most competitive brand was Camel. A lower price by any of these manufacturers on either of those brands would compel the other manufacturers either to meet the price or lose the business.

1269

Q. Now, operative about February 25, 1919, what occurred to radically change the prices of cigarettes, do you recall?

Mr. Nolan: That is objected to as calling for a conclusion and not within the issues, and as incompetent.

1270 *Defendant's Exhibit C.*

Examiner Arthur: It is not seen what the counsel's purpose is in asking the question, but he may go on.

A. There was an increase in the Internal Revenue tax on cigarettes and cigarette books.

Q. Incident to that change, what were the relative prices of Lucky Strike and Camels? A. May I refer to the date?

Q. If it refreshes your memory.

1271 Mr. Nolan: Same objection, same ruling and same exception.

A. In January the price of Lucky Strike, list price was $6.00 per thousand, less discount.

Mr. Nolan: That is 1919?

A. That is 1919. The Camel was listed at the same price. The Internal Revenue tax was increased, and in February the price of Lucky Strike was increased to $7.50, and the Camel to
1272 $8.00.

By Mr. Parker:

Q. Suppose you state that in terms of net prices instead of list prices. A. In January, 1919—

Mr. Nolan: I think the list price should be the proper one, and we will find from the discount how much off the list afterwards.

Defendant's Exhibit C. 1273

A. As a matter of fact, these discounts are identical on all of them. But if you prefer the list to the net price, I think it would simplify it to have the list price on account of the evenness of the figures, and they are easy to remember. The list price, in January, 1919, of Lucky Strike was $6.00, and Camel $6.00. The Internal Revenue tax was increased so that in February the list price of Lucky Strike was made $7.50, and Camel $8.00. That ran along until November, when we raised our Lucky Strike to $7.80 list 1274
and Camel was still $8.00. Later in November, we raised our price on account of the cost sheet coming through showing a higher cost, to $8.20, with Camel at $8.00. In December, feeling the effects of that increased price, we reduced our list to $8.00, making it identical with Camel's, and that continued for the balance of that period.

Q. Now, when in November, 1919, the Lucky Strike list price was raised to $8.20 a thousand over the preceding price of $7.80, what was the inducement to the American Tobacco Company to raise that list price? A. The cost of the cigarettes. 1275

Q. Now, was that advance in price, in your judgment, a reasonable or unreasonable one, considering the then apparent cost?

Mr. Nolan: Same objection.

A. It was a very reasonable advance. It ultimately produced less net profit than the original, prior to the change of tax, from $7.50 to $7.80.

Q. That advance was made on November 4,

1276 *Defendant's Exhibit C.*

1919, and it was followed on November 27, 1919, by an advance to $8.20? A. You are talking about $8.20 now?

Mr. Nolan: The first $7.80.
Mr. Parker: The first $7.80.
(Question repeated by stenographer.)

By Mr. Parker:

Q. Is what you have just said as to the first advance true also as applied to the second ad-
1277 vance? A. The reason, yes; is was increase of cost.

Q. What happened following that advance in price?

Mr. Nolan: Same objection.

A. Following the advance to $8.20, you will notice the decline in our sale of cigarettes.

Q. Thereafter I observe the decline in your list price of Lucky Strike cigarettes from $8.20 to $8.00. What induced that?

Mr. Nolan: Same objection.

1278

A. It was very evident that we felt the necessity of making our price the same as Reynolds.

Q. Now, if any item of Reynolds cost during that period was less than the corresponding item in your cost, what would be the effect of such in enabling Reynolds to maintain a lower price?

Mr. Nolan: Objected to as incompetent, not within the issues, and as calling for a mere inference.

Examiner Arthur: Is this for the purpose of obtaining Mr. Hill's opinion?

Defendant's Exhibit C.

1279

Mr. Parker: It is for the purpose of obtaining his opinion as an expert in the tobacco business.

Examiner Arthur: And he is President of the American Tobacco Co. He may answer.

Mr. Nolan: Exception.

(Question repeated by stenographer.)

A. The effect is that their margin would be greater than ours and our profit would be that much less. All these different items enter into cost and influence prices.

1280

Q. What occurs among manufacturers of cigarettes or tobacco products when an item of cost is advanced to all alike, as, for instance, that increase in Internal Revenue tax? A. They are all obliged to do the same thing; it affects us all equally.

Q. And when that occurs in substantial amounts, such as increase in Internal Revenue tax, does the manufacturer actually absorb it out of its profits or pass it on to the consumer? A. He passes it on to the consumer and raises his price.

1281

Mr. Nolan: If he did not, he would be a sucker, Mr. Parker.

Q. In a competitive condition such as exists in the cigarette and cigarette paper business, if an item of increased cost comes to one manufacturer or dealer and not to another, can the manufacturer or dealer so affected with the higher price pass it on to the consumer? A. He cannot. It is impossible.

1282 *Defendant's Exhibit C.*

Mr. Nolan: That is objected to as calling for a conclusion involving a comparison and not within the pleadings.

Examiner Arthur: Objection overruled.

Mr. Nolan: May I have an exception?

Examiner Arthur: Exception noted.

Q. During the period in question, what was the principal brand of cigarette paper in books that was put out by the American Tobacco Company? A. A brand called Riz La Croix.

1283 Q. Was that an importation from France? A. Yes, sir.

Q. What were its principal competitors? A. A brand called Ziz-zag, sold by the Surbrug Company, and Tamtam sold by Liggett and Meyers.

Q. Were all these in sharp competition? A. All of them, yes, sir.

Q. From your point of view, which was the most popular brand of those? A. I don't think there is any question but what Riz La Croix was the largest seller of all.

1284 Q. During that period, did the American Tobacco Company reduce the price of its Riz La Croix books? A. No, sir, my recollection of it is that the Riz La Croix books were sold to the consumer at five cents a book. The change in the Internal Revenue tax was such that it could no longer be sold at five cents, and the price was raised to ten cents. Then, to adjust the situation with the consumer, the number of leaves in the book, which had originally been 100, was increased to 175, so that it could be sold for ter cents and give the consumer more for his money

1285

than was possible under the old price and with the 100 leaves to the book.

Q. When the tax which went into effect on February 25, 1919, as I believe you just testified? A. Yes, it was about that date, I don't know the exact date.

Q. Do you recall, taking into account the basis of leaves, whether during the period from February 25 after the tax went into effect, to the end of this period I have referred to, down to January 1, 1921, whether there was a reduction in 1286
the price per leaf of the Riz La Croix book? A. There was. That is to say, while the book sold for a higher price per thousand, when you take into account the fact that in one price there was 100 leaves to the book and at the other time there was 175 leaves to the book. If you will divide that into units of 25, you will see that the consumer paid less for his leaves.

Q. To what extent was that?

Mr. Nolan: Just to put it on the record that you are showing the paper to refresh his recollection—I will not object to it— 1287
rather than testifying from his mind.

Mr. Parker: Put that on the record.

A. The consumer of the Riz La Croix books was paying at the rate of eleven dollars a thousand for 25 leaves of paper. That was when the change of tax had occurred and when we were obliged to adjust our situation by putting 175 leaves in the book.

Mr. Nolan: That is what he was paying after he got the 175 in?

1288 *Defendant's Exhibit C.*

A. No; after he got the 175 leaves, he paid $8.57 as against $11.02. In other words, in increasing the number of leaves, the price of ten cents was made effective on 175 leaves, which reduced the cost to the consumer outright from $7.00 to $8.57.

By Mr. Parker:

Q. Now, still referring to the paper which it was intended to use to refresh the witness's memory, on February 25, 1919, after the new
1289 tax went into effect, the American Tobacco Company was selling on the basis of books of 25 sheets each at $11.02, was it not? A. Yes.

Q. The Tamtam paper was sold on the basis of $8.19, was it not?

Mr. Nolan: That is objected to as incompetent, what the competitior was selling it for. Let the competitor be produced.

Mr. Parker: If this witness knows it.

Mr. Nolan: He does not know anything about it.

1290 Mr. Parker: Every man in the trade knows what his competitor's goods are selling at.

Mr. Nolan: Objected to as incompetent, calling for hearsay evidence, and not the best evidence.

Examiner Arthur: Does the witness testify from his own knowledge that the competitor's price was $8.19?

A. Yes, sir, it was a matter of public information. This price was published to the trade at large.

Defendant's Exhibit C. 1291

Mr. Nolan: May I have my exception noted?

Examiner Arthur: Surely.

By Mr. Parker:

Q. Now, Mr. Hill, when was it that the Riz La Croix went to packing books at 175 leaves instead of 100? A. In July, 1919.

Q. And at that time the price was reduced from the $11.02 that it obtained from the inception of the new tax? A. Yes, sir. 1292

Q. To units of 25 down to $8.57, was it? A. Yes, sir.

Q. Therefore, the readjustment was not the matter of the tax, because the matter of the tax had been imposed in February before, was it not? A. Yes, sir.

Mr. Nolan: That is objected to as calling for a conclusion and important inference. The witness has testified that the price was raised on account of the operation, and the tax was what made it necessary. 1293

Mr. Parker: The witness has not said that. The tax was raised, and therefore the raising of the tax could not amend the price.

Examiner Arthur: The record will show the witness's testimony.

A. The reduction in price was made on account of competition in effect at that time on these books.

Q. There was an advance in tax? A. Absolut-

1294 ely. We had a price of $11.02. Our competitors price was $8.19. We had to reduce our price to meet that competition, and therefore reduced it to $8.57.

Q. And that competing book was the Tamtam? A. Yes, sir.

Q. The Zig-zag paper, Mr. Hill, is that precisely the same paper as Riz La Croix or Tamtam? A. The paper itself is put in a form which has gummed ends, which is some convenience that
1295 consumers pay attention to.

Mr. Nolan: That is the Tamtam?

A. No, the Zig-zag.

By Mr. Parker:

Q. Whereas Tamtam and Riz La Croix are identical in other characteristics. A. Yes, sir.

Q. Now, is Zig-zag competitive with Riz La Croix and Tamtam notwithstanding that situation? A. Oh, certainly.

1296 Q. But on account of that situation, as I gather it, it carries with it some higher price? A. It does, because the people who want the gummed ends are willing to pay extra.

Q. And perhaps the gummed end is a factor of cost? A. Certainly. As a matter of fact, we have had the La Croix people put up books with gummed ends, and the cost to us is materially higher.

Q. Now, what would you say, Mr. Hill, with respect to increased cost that comes to the American Tobacco Company for the book paper?

1297

A. The same thing applies. The total cost is made up of all these individuals items that go into the cost of manufacture; and if we paid more than other people for any part of those additional costs, we are at a disadvantage and it comes out of our pocket.

Q. And cannot be passed on to the consumer? A. No, sir.

Q. As can be a common cost that comes to all? A. Yes, sir.

1298

Q. Mr. Hill, if it shall be established and so found by the Shipping Board, that competitors of the American Tobacco Company in the field of cigarette manufacture or in the field of exportation of cigarette paper books, enjoyed a price that the American Tobacco Company did not enjoy in this raw material or finished products, what, in your judgment, is the loss involved thereto to the American Tobacco Company? A. It is a total loss to the American Tobacco Company.

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Mr. Nolan: That is objected to as incompetent, irrelevant and immaterial and as calling for a conclusion and not a proper basis of damage.

Examiner Arthur: Objection is noted and not sustained.

Mr. Nolan: May I have an exception?

Mr. Arthur: Exception is noted.

Q. Are the American Tobacco Company and its competitors engaged in advertising an exploitation of its products? A. They all are, yes.

Q. As a tobacco man, do you believe that, generally speaking, these methods of advertising

1300 *Defendant's Exhibit C.*

and sales exploitation employed by the American Tobacco Company and its competitors are successful and efficient in securing business?

Mr. Nolan: That is objected to.

Examiner Arthur: It is not seen what the purpose of counsel is in asking that question, and it would seem to be far afield to the Examiner.

1301 Q. The question has this basis: that if a competitor is enabled by a slight cheapening of his raw material to increase his advertising, even though the advantage is not sufficient to affect the selling price, the increased advertising he is thereby able to do involves an injury to his competitor.

Examiner Arthur: Then you are bringing in the factor of advertising?

Mr. Nolan: You might just as well go into your workman's compensation law, and your insurance on your workmen, and

1302 the number of factories you build, and number of traveling salesmen, etc., if you are going into that.

Examiner Arthur: It would seem to the Examiner that that is going rather far afield and unduly lengthening the record in this case.

Mr. Parker: Of course, Mr. Examiner, if a competitor in a matter of a large amount has a lower price than this competitor, the disadvantage to the non-favored competitor is perfectly obvious. If

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the Reynolds Tobacco Company secures its tobacco at $1,000,000 and if the same tobacco costs the American Tobacco Company $2,000,000, then it is obvious that is ruin to the American Tobacco Company. Now, the contention of this complainant is that the practice is the same although the amount is smaller.

Examiner Arthur: My objection, if I may call it an objection, to your question is based on your going into the purpose 1304
to which the competitors put the assumed profit or gain over your company. That is, they are using it, we will say, for advertising. It is not seen what difference it makes to what purpose they put their advantage over your company, if advantage there be. It seems that that would rather prolong the record unduly. I will have to rule that out—sustain the counsel's objection.

Mr. Parker: Mr. Hill, assuming that it has been found that the American Tobacco 1305
Company paid $99,755.47 in freight charges on shipments of cigarette paper in bobbins or books made to it by the French Line during the period under discussion, which charges were figured on a basis of five francs to one dollar, and assuming that it appears further that the difference between this amount and what would have been paid on the basis of the actual rate of exchange is $53,840, and assuming that it has been shown that R. J. Reynolds Tobacco Company, Liggett & Meyers Tobac-

1306 *Defendant's Exhibit C.*

co Co., Surbrug, and the Tobacco Products Co., had a freight rate during this period based on actual rate of exchange, what part of this sum of $53,840 is loss or damage to the American Tobacco Company?

Mr. Nolan: That is objected to as incompetent, as calling for a conclusion and not a proper basis for damage.

Mr. Parker: I think it is the same question that has been answered.

1307 A. That is a total loss to the American Tobacco Company.

Mr. Nolan: Same ruling.

Q. Has it been recompensed for any part of that loss? A. It has not.

Examiner Arthur. If the gentlemen wish, we will recess. Suppose we recess until one o'clock.

1308 (A recess was taken from 12:30 to 1:30.)

Examiner Arthur: Gentlemen, we will come to order. Mr. Hill, as you know, was required to leave immediately after his direct examination, but promised to return later, and upon his return he will be cross examined. Are there further witnesses desired to be called by the complainant?

Mr. Holmes: Yes, I have two witnesses. One is present and the other will be here in a few moments. I am ready to go on. I call Mr. William A. Ferguson.

Defendant's Exhibit C. 1309

WILLIAM A. FERGUSON, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct Examination by Mr. Holmes:

Q. Where do you live, Mr. Ferguson? A. Greenwich, Connecticut.

Q. What is your occupation or profession?

Mr. Nolan: Better get his address. 1310

A. 40 Glenwood Drive. I am an attorney by profession.

Q. In the years, 1918, 1919, 1920 and 1921 were you in general practice or did you represent some particular corporation? A. I was not in general practice. I was general attorney for the Tobacco Products Corporation and all of its subsidiaries.

Mr. Nolan: General attorney for what? 1311

A. Tobacco Products Corporation and all of its subsidiary companies, which include the Surbrug Company.

By Mr. Holmes:

Q. During any part of the years mentioned, were you an officer of any of those companies? A. I was.

Q. What office did you occupy in the Tobacco Products Corporation? A. I became Secretary of the Tobacco Products Corporation in July,

1312 *Defendant's Exhibit C.*

1918, and have continued as such until the present date.

Q. How about the Surbrug Company? Were you ever Secretary of that? A. I am now. I could not tell you exactly the day I became Secretary; I believe it was early in 1919.

Q. May we use here a copy of Exhibit B, Mr. Nolan, as if it were the original?

Mr. Nolan: That is the one we have been using, is it?

1313 Mr. Holmes: Yes.

Mr. Nolan: Surely, subject to any corrections.

By Mr. Holmes:

Q. I will show you a copy of Exhibit B in this case. A. I have examined it.

Q. Assuming that where the Surbrug Company is mentioned here it indicates a shipment of cigarette paper or cigarette paper in books to the Surbrug Company by the French Line on the

1314 dates indicated and on the steamships indicated, are you able to state of your own knowledge whether such shipments were shipments of cigarette paper in bobbins or reels, on the one hand, or cigarette books such as consumers use to roll their own cigarettes, on the other hand? A. I am.

Q. Will you please state.

Mr. Nolan: Objected to as incompetent, irrelevant and immaterial and not based on a proper knowledge on the witness's part, and because his evidence is not the

1315

best evidence, as the invoices covering the shipments and the bills of lading are the best evidence.

Mr. Holmes: He says he knows.

Examiner Arthur: Witness has definite knowledge, he says.

Mr. Nolan: Yes, and I object to it. He says he has definite knowledge, but the knowledge is based upon some document that is in existence.

Examiner Arthur: Will the witness please state on what he bases his knowledge?

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Mr. Nolan: Before we do that, will your Honor make a ruling? I am not trying to be obstreperous, but trying to keep the record straight. Will you make a ruling?

Examiner Arthur: Surely. I will admit that testimony.

Mr. Nolan: Then, you overrule my objection? May I have exception noted?

Examiner Arthur: Surely. (To witness): On what do you base your knowledge that what you have stated happened?

1317

A. Well, as counsel and Secretary of the company for all these years, I have handled at variout times matters in connection with the importation of the cigarette paper booklets by the Surbrug Company and matters of importation of cigarette paper by that company, also in that capacity have entered into practically all conferences held among officers of the company regarding changes in price on the sale of Zig-zag cigarette paper booklets, changes in tax, discus

1318 sions back and forward regarding the purchase of francs to pay for the booklets, freight rates, and that sort of thing. I have stated the facts on which I base my conclusions.

Mr. Holmes: Shall I go on? Mr. Ferguson, these shipments to the Surbrug Company which I have referred to in the preceding question, were they shipments of cigarette paper in bobbins or rolls, or were they cigarette books—that is, cigarette paper in books, from which the consumer rolls his own cigarettes?

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Mr. Nolan: I again object on the ground that the testimony is purely hearsay, and that the documentary evidence, as represented by the invoices, the letters of credit, and the bills of lading, are the best evidence.

Mr. Holmes: Do you want to hear any argument?

Examiner Arthur: The objection is noted.

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Mr. Holmes: Do you want to hear any argument?

Examiner Arthur: No.

Mr. Nolan: Do you allow it? May I have the exception?

Examiner Arthur: Surely.

A. These shipments which appear on Exhibit B, of cigarette paper to the Surbrug Company on the French Line, were shipments only of cigarette paper booklets.

1321

Q. How do you know?

Mr. Nolan: Same objection, ruling and exception. Have you brought with you, Mr. Examiner, any subpoenas?

Examiner Arthur: Yes, sir.

Mr. Nolan: I would like to have a subpoena for each one of these men and the succeeding witnesses.

Mr. Holmes: If he answers this question, maybe that will satisfy you.

1322

Mr. Nolan: If you have the subpoenas with you, all right, if not, I will subpoena them all.

By Mr. Holmes:

Q. Mr. Ferguson, how do you know that such shipments were shipments of cigarette books? A. That is a rather difficult question to answer. I do know that we never did import any cigarette paper in bobbins from France as long as I have been connected with the company, except possibly one individual shipment on which I had a question of duty that came up. I know of only one shipment of cigarette paper in bobbins since I have been connected with the company, coming from France. We have had all our bobbin paper from Italy.

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Q. That is from your own knowledge? A. Yes: I know it as well as I know my name.

Q. When I first asked you this question, that is what you told me, was it not? A. Yes.

Q. After that, did you verify it in any way from the records of the company? A. I did.

1324 *Defendant's Exhibit C.*

Q. You testified that you represent the Tobacco Products Corporation, Surbrug Company, and others. Was the Tobacco Products Corporation and its subsidiaries engaged in the manufacture and sale of cigarettes and other tobacco products in the United States during the period I mention? A. It was.

Q. They did manufacture cigarettes? A. They did.

Q. What companies were they in competition
1325 with, if any?

Mr. Nolan: That is objected to as calling for a conclusion.

Examiner Arthur: This witness surely knows as an official of the company, whether he is in competition with other companies.

Mr. Nolan: The Supreme Court of the United States, Mr. Arthur, has laid down the law, even in Interstate Commerce cases, as to how a question of that sort
1326 can be asked and can be proved.

Examiner Arthur: I will have to allow the witness to answer the question.

Mr. Nolan: May I have my exception?

Examiner Arthur: Exception is noted.

A. The question was, what companies were in competition with the Tobacco Products Corporation at that time?

Q. Yes. A. Well, in the tobacco business and cigarette business during that period there were five leading companies.

1327

Mr. Nolan: I ask that that be stricken out. He has been asked to tell what companies were in competition.

Mr. Holmes: He said there were five.

Mr. Nolan: He does not mean to limit it to five, does he?

A. I said five leading companies.

Examiner Arthur: I think the witness should be allowed to testify without interruption.

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Mr. Nolan: I beg Mr. Arthur's pardon. I don't mean to interrupt to the extent of taking the testimony, but I think I am perfectly justified in setting forth the issues as they ought to be.

Examiner Arthur: Please let him finish the sentence; that is all.

A. The American Tobacco Company, Pierre Lorillard Company, Liggett & Myers Tobacco Company, R. J. Reynolds, were the four leading competitors of the Tobacco Products Corporation during this period.

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By Mr. Holmes:

Q. Mr. Ferguson, I neglected to ask you at the point where I intended to, the question which I will ask you now: These cigarette papers in books, that is, the cigarette books imported by Surbrug Company during that period, did they have any particular brand name? A. They did.

Q. What was that brand name? A. Zig-zag.

1330 *Defendant's Exhibit C.*

Q. You have testified that the Tobacco Products Company and its subsidiaries were in competition with other companies. A. As far as the manufacture of cigarettes is concerned.

Q. In the manufacture of cigarettes.

Mr. Nolan: May I hear the last question and the answer?

(Question and answer repeated by stenographer.)

1331 Mr. Nolan: On that same line may I say that we are taking the same objection to each question and you are making the same ruling?

Examiner Arthur: Surely; that is all right.

Q. Were they in competition with the American Tobacco Company in the manufacture and sale of cigarettes?

Mr. Nolan: Objected to as incompetent and as calling for a conclusion not within

1332 the issues.

Examiner Arthur: That the witness has no knowledge?

Mr. Nolan: Not on that ground at all; just on the two grounds I have stated. The witness evidently has knowledge of anything his company did. I am only stating my objection on those two grounds.

Examiner Arthur: And no condition that influenced his company with respect to competition by the American Tobacco Company?

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Mr. Nolan: I am not objecting on that ground.

Examiner Arthur: The objection is overruled.

Mr. Nolan: Exception.

(Question repeated by stenographer.)

Q. When I say "they" I mean the Tobacco Products Corporation.

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Mr. Nolan: That is objected to on the ground that there is no evidence that the witness has any information as to the Tobacco Products Company in its relation to competition, and on the ground that the question calls for a conclusion and is incompetent.

Examiner Arthur: I understood that the witness was one of the officers of the Tobacco Products Corporation.

A. I so testified.

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Examiner Arthur: The evidence will be admitted.

Mr. Nolan: May I have the exception noted?

Examiner Arthur: Exception noted.

Q. During this period mentioned, you so understood? A. Yes, sir.

Q. During the period which we have referred to, that is to say, the years 1919, 1920, and 1921, was the Tobacco Products Corporation in competition with the American Tobacco Company in

1336 *Defendant's Exhibit C.*

the manufacture and sale of cigarettes in the United States? A. It was.

Mr. Nolan: Now, please, you are a lawyer; you know better than to answer questions until an objection is made.

A. I understood you to say that an objection was to be made to all of these questions.

Mr. Robb: That was my understanding.

1337 Mr. Nolan: That was my previous line.

Examiner Arthur: That is understood.

Mr. Nolan: The entire examination of these witnesses.

Examiner Arthur: The Examiner will direct the case.

By Mr. Holmes:

Q. Mr. Ferguson, during the period referred to, that is, 1919, 1920 and 1921, was the Surbrug Company in competition with the American To-

1338 bacco Company in the sale in the United States of cigarette paper in books or booklets? A. It was.

Q. What brand of cigarette books was the Surbrug Company in competition with? A. Riz La Croix.

Q. What book was it which was sold by the Surbrug Company competition with this book that you have mentioned of the American Tobacco Company? A. Well, to make the record straight, the Surbrug Company had a contract for an exclusive sale of Zig-zag paper booklets

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in the United States; but after the Tobacco Products Corporation acquired all the capital stock of the Surbrug Company, as a matter of internal organization, the Tobacco Products Corporation itself sold the booklets which Surbrug imported.

Q. That is clear then. During the period referred to, where did the Tobacco Products Corporation and its subsidiaries which were engaged in the manufacture of cigarettes get their paper which was used in the manufacture of such cigarettes? A. A great deal of it they bought right in this country, and they also imported some from Italy. They also used some Japanese paper now and then.

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Q. Do you know whether they got any paper from France? A. Bobbin paper they never imported from France. They used French paper which they bought in this country.

Mr. Nolan: You mean French manufactured paper?

1341

A. Brought in this country. Other importers brought it in, and we bought from dealers.

Mr. Nolan: At a higher price?

A. Search me. I don't know about the price.

By Mr. Holmes:

Q. Do I understand as a matter of fact that these companies—that is, the Tobacco Products Corporation and its subsidiaries—did use in the

1342 *Defendant's Exhibit C.*

manufacture of cigarette paper which originated in France? A. Yes.

Q. Do I understand also that they did not import that French paper directly in their own names with themselves as consignees?

Mr. Nolan: That is objected to until we find whether you are talking about Surbrug or the Tobacco Products Company or the subsidiary, and that the name of the subsidiary be mentioned, because we have a definite statement by Exhibit B.

1343

Q. I asked all of them. He says none of them. Is that correct? A. Not so far as I know.

Q. What was the practice of the Tobacco Products Company and its subsidiary as to the acquisition of paper of French origin used in the manufacture of cigarettes? A. They brought it here from agents of French manufacturers, such as Mr. Drucklieb. He was the agent in this country for all the bobbin paper made by Brownstein. Surbrug had the contract for booklets made by Brownstein, and Drucklieb had the agency for the bobbin paper; so mostly we used Brownstein paper, but we had to buy it from Drucklieb because he had the agency for that.

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Q. Do you know whether Drucklieb imported any booklets? A. I never heard of any if he did. Not any Zig-zag booklets; nobody could import them except Surbrug.

Q. Which were the manufacturing subsidiaries at that time of the Tobacco Products Corporation, if you remember? A. The Falk Tobacco Company, Inc., had a plant in Richmond, Va.,

Melechrino & Co. had a plant at 32 West 100th Street, New York City. Schinasi Brothers, Inc., had a plant on West 120th Street, New York City. Those are the only three plants that we had in the period in question.

Q. During the period in question, did the Tobacco Products Co. or its subsidiaries, as far as you know, buy paper of French origin from other importers than Drucklieb? A. I am pretty sure they did, but I could not say positively in what quantities. I remember there was another 1346
man, I think his name begins with S but I cannot remember it; I have met him once. It seems to me the name is Sweitzer—that is in my mind.

Q. Do you know Arthur O'Brien? A. I never met him; I know who he was.

Q. What did he do? A. Arthur O'Brien formerly—Oh, I am thinking of his brother. He had a brother who was Vice President of the American Tobacco Company at one time. Arthur O'Brien was his brother, and I know that he did import cigarette paper, I think from France, but whether he did during this period or not, I do 1347
not know.

Q. Was there anybody besides Drucklieb from which the Tobacco Products Company or its manufacturing subsidiaries who manufactured cigarettes obtained French cigarette paper, as far as you know, during the period mentioned? A. As I say, I think the only one I know was a man, I think his name was Sweitzer; and then I spoke about the trial shipment that we brought over ourselves from another French manufacturer. It seems to me the name was something like Velie. We had trouble with duty on it.

1348 *Defendant's Exhibit C.*

Q. Do I correctly understand that during the period in question, all the cigarette paper which the Tobacco Products Company or its subsidiaries used in the manufacture of cigarettes was purchased here in this country, either from Drucklieb or Sweitzer, with the exception of one or two items? A. All the French paper, yes; but I said we used a good deal of Italian paper, and also some Japanese paper.

Q. I understood that.

1349 Examiner Arthur: Will the respondent take the witness?

Cross Examination by Mr. Nolan:

Q. In 1919, 1920 and 1921 I understand you were the General Counsel for the Surbrug Company? A. Yes, sir.

Q. And also General Counsel for the Tobacco Products Company. A. Yes, sir.

Q. Were they separate companies? A. Separate corporate organizations.

1350 Q. But controlled in the one way? A. All in the same office, all in the same family.

Q. What do you mean by the same family? A. I mean the directors were the same; the officers of the Tobacco Products Company were officers of Surbrug. The Tobacco Products Company owned all the capital stock. Only once in a while we held a meeting of the Surbrug when some bankers had to go on the outside; but when the executive of the company met them, I was Secretary and they discussed matters the same

1351

as if they were meetings of the Boards in this office.

Q. The Tobacco Products Company was—

A. Was the holding corporation and the sales agent for all the subsidiaries.

Q. And the Tobacco Products Company, as the holding corporation of all the others and the sales agents of all the others, had a particular set of officers, did they not? A. That is correct.

Q. Who were the officers of the Tobacco Products Company during the period in the suit? A. 1352
They changed from time to time. What do you want—all of the officers?

Q. As nearly as you can tell them.

Q. Well, I went up there in January, 1918, and became Secretary of the company in July, 1918. At the time I went up there, George L. Storm was—

Mr. Holmes: Mr. Examiner, I object to this on the ground that it is immaterial, merely because it takes up so much time and fills up the record. I don't mind having it on the record, but I don't see the need. 1353

Examiner Arthur:: The Examiner is not quite able to see what relevancy the names of these officers has in this case. It might be that Mr. Nolan—

Mr. Nolan: I will say in cross-examination your Honor will understand that particular cases can be enlarged or limited by the trial judge. It is for the judge to determine to what extent cross-examination can go, and I merely am going to

1354 *Defendant's Exhibit C.*

leave it to your judgment for you to determine how far I can go. I have a reason for it.

Examiner Arthur: The better practice, of course, is that he shall not enlarge on the direct.

Mr. Nolan: On the contrary, I am sorry to say that Judge Hough, of the United States Circuit Court of Appeals, only recently said what I said to you. Cross-ex-
1355 amination is entirely in the discretion of the Court. Where the Court feels that there may be a possibility of good purpose served, cross-examination shall be liberal.

Examiner Arthur: I am not disposed at all to be anything but liberal with you, gentlemen. If Mr. Nolan has any particular point he has in mind and wishes to bring it out by this question, all well and good.

Mr. Nolan: I have, sir, but to disclose it now might ruin the cross-examination.

1356 Examiner Arthur: We will rely upon Mr. Nolan. The witness may answer.

A. George L. Storm was President of the company when I first went up there in 1918.

Q. I will strike out 1918 and ask you to give me the Secretary of the Tobacco Products Company, the names of the officers and directors in the years 1920 and 1921. A. I will not say that I can give them all, but I believe that I can give nearly all of them. In 1919 George J. Whelan was President of the Tobacco Products Company, and George L. Storm was acting President, being a

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Vice President actually. Mr. Storm resigned, I believe, in August, 1919. The other Vice Presidents besides—

Q. May I interrupt you there? Was that the time Mr. Surbrug's Tobacco Company was taken over by the American Tobacco Company? A. No; Mr. Storm went out of the business. Mr. Whelan also resigned in the middle of 1919, if my memory serves me right; and Mr. James L. Dixon, who had been a Vice President up to that time, was elected President—no, no, that was later.

1358

Q. At the time Mr. Whalen resigned, he went in at the head of the American Tobacco Company? A. No, that is the only office Mr. Whelan held.

Q. I mean the United Cigars Company. Is that his brother? A. Yes, Mr. Charles Whelan; I may be wrong in my dates; I am thinking of 1922.

Q. Get back until we connect all these companies together. A. Mr. George L. Whelan was President in 1919; Mr. George L. Storm was acting President, being Vice President. Mr. R. M. Ellis was also Vice President. Mr. James L. Dixon was also Vice President. Mr. L. V. McKittern was also Vice President. Mr. Albert Falk was also Vice President. Mr. Jac L. Hoffman was also a Vice President. Mr. Gray Miller was Treasurer; and I was Secretary.

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Q. We don't have to have them for each year. That arrangement continued during 1919, 1920 and 1921, with one or two exceptions? A. I am not sure when Whelan resigned; I think it was

1360 *Defendant's Exhibit C.*

in 1919. And then Mr. Storm became President. Did you want the Directors too?

Q. As nearly as you can give them. A. At that time, as nearly as I can remember, the following were the Directors: George J. Whelan, Albert Falk, Gray L. Hoffman, R. M. Ellis, L. V. McKitterick, George L. Storm, W. H. Butler, Thomas H. Woods. I was a director for a time; I believe it was in 1919.

Q. Are you still Secretary? A. Yes, sir.

1361 Q. Then, as Secretary of the company, the minute book of the company is in your custody, is it? A. Yes, sir.

Q. Then, instead of your wasting time with foolish questions I am asking, you could bring them in for themselves? A. At any time.

Q. You will later here introduce those? It will not be necessary for us to subpoena those, will it? A. Any time you desire.

Examiner Arthur: I am not deciding that there will be another hearing.

1362 Mr. Nolan: Well, I am going, certainly, as far as the defense is concerned, to ask for another hearing.

Examiner Arthur: I just want that to appear in the record.

Mr. Nolan: Then I ask now that the Court instruct the witness to leave the witness stand and produce the minute books of the corporation before his examination is concluded. I am entitled to that. He has testified from memory, and I ask for their official records.

Examiner Arthur: But the Examiner would like to know the purpose.

Defendant's Exhibit C.

1363

Mr. Nolan: I intend to show that the Falk Tobacco Company, the Melechrino Company, the Schinasi Company, and also the Tobacco Products Company, as well as the American Sumatra Company, which is now in the hands of a receiver in New York, are all parts of the complainant in this case; that the Surbrug Company is a part of it, and that there is a working agreement between R. J. Reynolds and Liggett & Meyers with the American To-

1364

bacco Company, the complainant in this case, which are matters of public record, and that there has never been any competition between them at all, despite the testimony of the President. I am going to show that Arthur O'Brien and Walter O'Brien are Brothers-in-law of Whelan of the United Cigar Company. I think he was formerly with Tobacco Products Corporation, of which this gentleman is Secretary.

Mr. Robb: Do you contend that that relationship is sufficient to justify—

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Mr. Nolan: Not only that, but there is a combination to regulate prices, no matter what happened in freight rates—that did not change the prices—and I intend to cover that by open testimony.

Mr. Robb: Covering the period under discussion?

Mr. Nolan: Absolutely, and I am laying the foundation for it. I have a right to go into the family history of every witness they call if I want to.

1366 *Defendant's Exhibit C.*

Examiner Arthur: Mr. Witness, what was it you wished to say on this point?

Mr. Nolan: I said that off the record. Counsel for the Compagnie General Transatlantique states that the purpose of the cross-examination is to show that the Tobacco Products Company, Surbrug, Falk Tobacco Company, Melechrino & Company, Schinasi & Company, are all either parts, and were at the time of the transactions
1367 in suit, or connected by contract, with the organization known as the American Tobacco Company, the complainant in this suit; that instead of there being competition at the time of the transaction in suit, there was a working agreement between the American Tobacco Company, one of the concerns mentioned, as well as Liggett & Meyers and F. R. Reynolds & Co., it not being claimed that the latter two were any part of the American Tobacco Company; that there was no real com-
1368 petition, by reason of private agreements between the parties; that Whelan of the Tobacco Products Company, O'Brien mentioned as a broker, Whelan's brother as President of the United Cigar Company, were all relatives and all acting for and with the complainant in this case.

Examiner Arthur: Do you hope to show that by the documents?

Mr. Nolan: Which I shall ask to be subpoenaed if this witness and the other witnesses do not produce them. This statement is made on the record, in view of the

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Examiner's statement in answer to a question from the Compagnie Generale Transatlantique as to an adjourned date, that the Examiner was not sure that an adjourned date would be granted. Counsel for the Compagnie Generale Transatlantique states that an adjourned date is necessary and that subpoenas issued by the Examiner are necessary to substantiate the allocations now made.

Examiner Arthur: (To the witness.) In the event it was seen desirable to have the documents which counsel for the respondent desires, would the witness be disposed to bring them voluntarily?

1370

A. What do you mean? Documents or books?

Mr. Holmes: Precisely what is it I am asked to furnish?

Mr. Nolan: I would like to have the minutes of the Tobacco Products Company, Surbrug & Company, Falk & Company, Melechrino & Company, Schinasi & Company, all of which were parts of the Tobacco Products Company in the years 1919, 1920 and 1921. I intend to ask that the minute books of the American Tobacco Company for those three years be produced also, and that any contracts that will come out on the cross-examination of Mr. Hill—any contracts between the American Tobacco Company and mills in France for the manufacture of the papers that are involved in this suit,—be produced; also

1371

1372 *Defendant's Exhibit C.*

any contracts with the United Cigars Company, of which Whelan is a party, and all contracts with O'Brien who acted as a broker in the buying of paper and selling and importation, and all contracts with Drucklieb. Of course, I know that,—this is off the record—

Examiner Arthur: Let us not have anything off the record.

Mr. Holmes: Now, we are dealing right
1373 now with the question to this witness, whether he will produce the records of the Tobacco Products Company and certain subsidiaries.

Mr. Nolan: Of which he is Secretary.

A. Certainly, if the Examiner wants them produced, unless counsel objects to the production and makes some motion that they be not produced, I will produce them. I have no idea of putting anybody to the trouble of subpoenaing me.

1374

Mr. Holmes: Of course, I cannot ask you.

A. If the Examiner asks me to produce them, I will do so; I will not wait for a subpoena. The books are there, and there is nothing to conceal.

Mr. Nolan: The witness is under cross-examination, and I now ask the Examiner to order them, the same as a Judge would order him to produce the records.

Defendant's Exhibit C.

Mr. Holmes: Has there been sufficient foundation laid? The foundation ought to be laid seems to imply— 1375

Mr. Nolan: You have laid the foundation.

Mr. Holmes: We need not argue that at the present time. But this application seems to be based on the hypothesis that there was no competition between these companies.

Mr. Nolan: This demand by me for the production of the books is not based on anything of the sort; it is based on the ground that the witness has testified to something of which there is a record, and I want the record produced. I don't intend to be limited either by any suggestion you draw from my remarks as to the ground for it; I demand the production of the books for the purpose of a general cross-examination. 1376

Mr. Holmes: Mr. Examiner, it does not appear to me that there is anything in the examination of this witness which opens the door for cross-examination for the production of the books of this corporation. I did not make objection to the examination in which names of the officers of the company were required; I thought it was quite immaterial, but I did not press my objection. But now we come to the demand that all the books be produced, and I know of nothing on the direct examination which has opened the door to 1377

1378 *Defendant's Exhibit C.*

such cross-examination. If the counsel desires to make this witness his own witness to prove or attempt to prove there was no competition, that might be another matter, but that is not before us. I think that is the legal status.

Mr. Nolan: That is the risk I take.

Examiner Arthur: Of course, one of the factors upon which the complainant is relying is the factor of competition. Now,
1379 it seems to me that if you are going to prove that there is no competition, you should do that by direct evidence. And for the time being, unless you raise it again, I will have to deny permission at this phase of the proceeding that the witness produce the documents you desire.

Mr. Nolan: Do I understand that I am limited in my cross-examination, as a matter of cross-examination, to the categorical questions of the witness on the very things he has been questioned about, with-
1380 out any free limitation to go a little beyond that?

Examiner Arthur: You can bring it in on your direct examination if you wish. The competition is the factor that this complainant relies on.

Mr. Nolan: I ask you, as a matter of cross-examination as the Judge trying this case, am I limited in my cross-examination of this witness to a categorical question on what he has been questioned on direct?

Examiner Arthur: You are not limited

1381

to a categorical answer. You are unlimited so far as the knowledge of the witness goes. But you should proceed to put it in your direct case instead of cross-examination. It seems to me that is unwarranted.

Mr. Nolan: It is the chance that every trial lawyer must take, and we two know it; and if we are willing to take the gamble, the court should let us hang ourselves.

Examiner Arthur: You will not be deprived of anything. If you want to bring 1382
this in and contend that there was no competition such as the complainant relies upon, you are perfectly free.

Mr. Nolan: I shall proceed, sir, in my regular way and take my chances as to what will happen. I will go back to the question. Mr. Ferguson, how old are you?

Mr. Holmes: Just a moment. I understand counsel makes this witness his own witness?

Mr. Nolan: When I come to that point. The law is fixed; I am not going into 1383
that. I will start in at the beginning of the cross-examination.

Mr. Holmes: Is this cross-examination?

Mr. Nolan: This is cross-examination, and when I feel like going into my own case, I will go into it.

Mr. Holmes: In order to make my objections, I would like to know.

Examiner Arthur: I will say that Mr. Nolan, of course, is not permitted to go into his direct case until you have finished.

1384 *Defendant's Exhibit C.*

Mr .Holmes: Yes, sir.

Mr. Nolan: Now, I am cross-examining; I am not going into my direct case.

Q. How old are you? A. Forty-one.

Q. Where were you born? A. Hammond, New York, St. Lawrence County.

Q. When? A. On October 30, 1883.

Q. When were you admitted to the bar? A. In October, 1908.

1385 Q. Where? A. New York City, First Department.

Q. Where did you work before you went to the Tobacco Products Co.? A. When do you want me to start?

Q. After you were admitted to the bar, in 1908.

Examiner Arthur: Mr. Nolan, is there any question as to this man's competency?

Mr. Nolan: No, sir, just his history, so that the record will disclose his culture. I have no doubt at all that the court will

1386 say that he is an excellent man and a prominent member of the bar, but I have a right to go into questions. It may take a little time, but I am going to insist upon my rights.

Examiner Arthur: You mean—

Mr. Nolan: I am going to give him a better certificate than Mr. Holmes. Mr. Arthur, you and I have to fight this out the same as in any case at law. You are a Judge. I have a right to cross-examine a witness. What is back of my mind is my

1387

own affair, and you have to give me a certain liberal right.

Examiner Arthur: I think, Mr. Nolan, I think I have been exceedingly liberal. This case has been delayed today very seriously.

Mr. Nolan: Not by me.

Examiner Arthur: It has been hanging fire since May, 1923.

Mr. Nolan: Not by me.

Examiner Arthur: The Board is not in- 1388
terested in this man's past history except insofar as he is proved to be a competent witness, which I take it you admit.

Mr. Nolan: I am going to prove it, yes.

Examiner Arthur: There is no need of going over this man's history again, unless you have something to attack him about, and I take it you don't.

Mr. Nolan: Will you please make a ruling that you will not permit me to proceed on this line? If so, we will save a lot of time. 1389

Examiner Arthur: Mr. Nolan, I cannot permit this case to be longer delayed by the admission of irrelevant testimony. You will therefore confine your questions on this cross-examination of Mr. Ferguson to relevant, material matters.

Mr. Nolan: On behalf of the Compagnie Generale Transatlantique, I take exception to the court's ruling of my limitation to the cross-examination.

Examiner Arthur: Exception is noted.

1390 *Defendant's Exhibit C.*

Cross Examination Resumed by Mr. Nolan:

Q. When did you become the Secretary of the Tobacco Products Co.? A. As I previously testified, early in July, 1918.

Q. And before that, had you any connection with the Surbrug Co.? A. No, sir.

Q. Before you became Secretary of the Tobacco Products Company, in what occupation were you engaged? A. Lawyer.

Q. Where? A. I became associated with White
1391 & Case in January, 1918. Prior to that I had been in the Borough of Manhattan with Marx & Marx, from January, 1915, to January 1, 1918.

Q. White & Case are the General Counsel for the American Tobacco Company? A. Never have been, to my knowledge; never had any connection with the company.

Examiner Arthur: I will have to ask, Mr. Nolan, that the witness testify, please. Let us get down to business.

Mr. Nolan: I am getting down to busi-
1392 ness as rapidly as I can, but I say that I object to the limitation of my cross-examination, and I take an exception.

Examiner Arthur: That is noted.

Mr. Nolan: I want it noted every time it occurs.

Q. White & Case are the counsel for the Tobacco Products Company? A. That is correct. They formed the company in 1912.

Q. Were you one of the incorporators? A. I was not. I did not know the company in 1912.

Defendant's Exhibit C. 1393

Q. In 1918 you entered into the Tobacco Products Company and became Secretary? A. That is correct.

Q. Under the instructions of White & Case, the counsel of the company? A. No, I would not say that. When I went with White & Case after I left Marx & Marx, in January, 1918, I was employed as one of their attorneys, and they directed me to go up and handle all the legal work of the Tobacco Products Company for them. They were General Counsel. I had been there six 1394
months and the officers requested me to become Secretary there. White & Case asked me to remain.

Q. You went to the New York office of the Tobacco Products Company from White & Case? A. I had an understanding with White & Case. Sometimes I was at their office and sometimes up town.

Q. When you became Secretary of the Tobacco Products Company, you took charge of the books? A. That is right.

Q. At the time you became Secretary of the 1395
Tobacco Products Co., what other companies were affiliated with them? A. Those companies I have mentioned.

Q. Won't you mention them again, please? A. Falk Tobacco Co., Inc.; Melechrino & Co., Inc.; Schinasi Bros., Inc.; Surbrug Co.; Gianoclis Co.; Prudential Tobacco Co.; Khedieval & Co. Those are the only companies, I believe, at that time that they had an entire control of.

Q. That was in 1918? A. Yes, sir.

Q. And they kept control of those companies in 1919? A. Still so.

1396 *Defendant's Exhibit C.*

Q. And in 1920 and 1921—you are still Secretary, are you? A. Yes, sir.

Q. What other companies did they add in 1919, 1920 and 1921 to those mentioned as subsidiaries? A. In 1919 they bought out Robert Harriss & Bros., Inc., in North Carolina.

Q. The Falk Tobacco Company, did they make and sell cigarettes? A. Yes, sir.

Q. The Melechrino Company made and sold cigarettes? A. Yes, sir.

1397 Q. Schinasi made and sold cigarettes? A. Yes, sir.

Q. Cordova made and sold cigarettes? A. They had some brands but it did not amount to anything.

Q. They did sell some to the United States? A. No, the Tobacco Products Company was the selling agent for all those companies. Only three of them were manufacturers. Some of those other companies owned brands, but Melechrino, Schinasi and Falk did all the manufacturing. The Melechrino did all the selling through the

1398 Prudential.

Q. What was the Prudential? A selling company also? A. Yes, sir; they had a brand called Father's cigarettes that they billed themselves. They were made up in the Schinasi factory.

Q. The Tobacco Products Company did not import either tobacco or papers to the United States, did it? A. We had another subsidiary company called Melechrino Tobacco Company which imported all leaf tobacco.

Q. That was Turkish tobacco? A. Yes.

Q. As far as the Tobacco Products Company

1399

was concerned, it did not import any papers, did it? A. No—it might have once in a while in its own name, but not often.

Q. Did the Tobacco Products Company ever import any papers used in cigarette papers or cigarette books? A. I would not say that it did or did not. I don't actually know whether they made any separate importations themselves. Usually it was through the Surbrug Company. I could not say whether once or twice, although they may have.

1400

Q. Surbrug brought in some of the papers? A. They brought in all of the papers, practically.

Q. Didn't you buy something from Sweitzer? A. Yes, but that was from this country.

Q. But Sweitzer sold French manufactured paper, did he? A. Yes, sir.

Q. And O'Brien sold some French manufactured paper, did he? A. I believe he did; I am not sure.

Q. And the Tobacco Products Company bought from O'Brien & Sweitzer? A. I don't know whether from O'Brien; they bought sometimes from Sweitzer.

1401

Q. Didn't you yourself mention O'Brien as the person from whom you bought? A. No.

Q. How did his name appear? A. Mr. Holmes asked me if I knew Arthur O'Brien, and I said I never met him. I said he was a brother of Mortimer O'Brien.

Q. If the Tobacco Products Company purchased from Sweitzer cigarette papers here in the United States, they purchased them from Sweitzer after he had imported them in the

1402 *Defendant's Exhibit C.*

United States? A. Of course, it was French paper.

Q. And the Tobacco Products Company purchased papers from Surbrug. What Surbrug imported, you purchased them in the United States? A. Yes, sir; it was a mere matter of bookkeeping.

Q. I am asking you if Surbrug was a subsidiary and brought in the papers? A. Yes, sir.

Q. Surbrug had their own individual stock-
1403 holders, did they? A. The Tobacco Products Company controlled all the stock. A few shares were in the names of the directors.

Q. A few shares in the name of the Tobacco Products Company? A. In the name of the directors; that is all.

Q. Will the records show that? A. Yes, sir.

Q. In 1919, 1920 and 1921? A. Surely. The Tobacco Products owned one hundred per cent. There was just one share in the name of the directors to qualify them.

Q. Then the Tobacco Products Company used
1404 Surbrug merely for an importing concern? A. I said on my direct testimony, Surbrug had this contract with Brownstein for the exclusive agency of Zig-zag paper; and naturally when we dealt with Brownstein, Surbrug sent the orders and they billed them to Surbrug. But the Tobacco Products Company paid the bills.

Q. Were the bills paid by the Tobacco Products Company? A. Yes, sir.

Q. When did the Tobacco Products Company take over Surbrug? A. In 1912 or 1913.

Q. The Tobacco Products Company is an in-

dependent corporation and always has been? A. Yes, sir. It was formed in 1912 to compete with the other big manufacturers. 1405

Q. What other big manufacturers? A. The four that I mentioned—R. J. Reynolds, Melechrino, Liggett & Meyers, and Pierre Lorillard Company.

Q. Did you have anything to do with the handling of the contract made by Surbrug over in France? A. No. When we bought out Surbrug, their contract was in existence. It was renewed. 1406

Q. You mean, the contract with Surbrug and Brownstein? A. Yes. It expired in 1918, and at that time I renewed it for another ten-year period.

Q. Was it renewed on the old terms? A. Practically the old terms except for price.

Q. That is what I mean. The price was the important part of the terms, was it? A. No, not altogether;—the most important, I should say.

Q. There was an increased price in 1918? A. The price went up ever since the war started. 1407

Q. What do you mean by saying as to its terms except for price? A. They had given two or three successful ten-year contracts for exclusive agencies; and as they came up, they renewed them.

Q. First, Surbrug had the exclusive agency for Brownstein's papers? A. Yes, just the Zigzag paper booklets.

Q. Were those the booklets that had paste on them? A. Yes, sir.

Q. They were somewhat of a higher price than

1408 *Defendant's Exhibit C.*

the ordinary booklets? A. Yes, sir; we always got a higher price than some of the other booklets without the gum on them.

Q. Because you had the gum on them? A. I suppose that is the reason.

Q. You are the Secretary. A. If the people want to pay the price, we will charge what we can get, whether because the gum or because they like the shape.

Q. Take the cost price on your part and your
1409 insurance, they make a difference in the cost price, don't they? I mean, your original buying price and your insurance? A. Surely.

Q. They make a difference? A. Surely.

Q. And of course the gum will make a difference? A. They must make a difference in the original cost.

Q. Then, you would not say that the paper with the gum on it is the same as no gum? A. It probably costs more to make.

Q. Then it would not be in the same quality as paper without gum on it? A. You would not dis-
1410 tinguish it as to quality, I don't think. You would say some people prefer it with the gum and some don't like it with the gum.

Q. Leave out the quality. It would not be the same paper as paper without gum? A. No.

Q. Consequently, it would command a different price? A. Not necessarily.

Q. Now, as Secretary of the company, have you looked into the question of the manufacture of such papers at all? A. I went through a cigarette paper factory in France once.

1411

Q. In Paris? A. That was the only time I was ever in Paris.

Q. What factory was that?

Mr. Holmes: Mr. Examiner, what is the purpose of asking—I object to that as immaterial.

Mr. Nolan: I can only explain it on the general grounds of liberality of cross-examination. I am serious.

Examiner Arthur: You haven't any question in mind as to this witness's competency as a judge of cigarette papers, have you?

1412

Mr. Nolan: Absolutely. I say absolutely I have a question as to his competency. He is no different from your Honor and myself; he is just a lawyer and secretary doing certain work there, and he has testified to other things.

Mr. Holmes: This witness has testified to certain facts which don't have anything in the world to do with his knowledge of cigarette papers in France, so I submit it is not proper cross examination to ask him if he ever went through a cigarette factory in Paris, France.

1413

Examiner Arthur: Would it not be sufficient for him to reply as he did—that he went through a factory—without giving the name?

Mr. Nolan: The name might be very important in this particular case.

Examiner Arthur: I will have to leave that with you, then, if you say it is.

1414 *Defendant's Exhibit C.*

Mr. Nolan: I may find that I have a mare's nest, to be perfectly honest.

Examiner Arthur: All right; go ahead.

By Mr. Nolan:

Q. What was the name of the factory you went through at Paris, France? If this is a cigarette manufacturing plant that you went through in Paris, I don't want to know; but if it is a paper
1415 plant, I want to know. A. I don't know that I can recall the name. I know that it was not Brownstein; it was not Joe; it was not the one that makes Riz la Croix. It seems to me it was the French word Papier.

Q. That is the French word meaning paper? A. I think it was at Nanterre, which is outside of Paris.

Q. You haven't had anything to do with the making of paper? A. No.

Q. You are not familiar with the quality itself? A. No.

1416 Q. In arranging for the shipments as Secretary of the Surbrug Co. for the other side, did you have charge of the purchase of the letters of credit? A. We did not handle letters of credit.

Q. How did Surbrug handle them? A. We always bought francs in this country, anticipating our shipments.

Q. You bought the francs in this country and sent the francs over? A. Yes, we would buy francs, sometimes for months in advance if we thought the price was right; and when the bills came in, we would ask for the price there.

Defendant's Exhibit C.

1417

Q. And as you shipped the goods to the other side, you shipped them prepaid with francs you bought in the United States? A. They paid the freight over there, and we paid them for the francs they paid there.

Q. Whom do you mean by "they"? A. Brownstein.

Q. Did you have an arrangement with Brownstein whereby you merely sent him an order, or did you have a yearly contract? A. I told you we had a ten-year contract.

1418

Q. Brownstein would send the goods to you prepaid; they paid all the freight? A. They paid everything and sent an invoice for it.

Q. They attended to the shipments and handled the bills of lading, so that at your end you did not have to do anything at all except to send the money in advance? A. We did not send it in advance; we just had our Custom House books to clear the paper, and they delivered it to our warehouse, and we paid them usually on thirty days notice after the invoice.

1419

Q. You had no Traffic Department here to handle it for yourself? A. We had a Traffic Department.

Q. But they did not handle the deliveries on the other side? A. Oh, no; he shipped on whatever steamers he wanted.

Q. And paid the freight in advance, and collected from you at a later time? A. Yes, sir.

Q. That is all.

1420 *Defendant's Exhibit C.*

JOSEPH C. WIDMER, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct Examination by Mr. Holmes:

Q. What is your full name? A. Joseph C. Widmer.

Q. Where do you live? A. 161 East 79th

1421 Street.

Q. What is your occupation? A. Manager of the Supply Department of the Liggett & Meyers Tobacco Company.

Q. I show you a copy of Exhibit B in this case. I ask you to look it over and note some shipments there to Liggett & Meyers Tobacco Co., sometimes abbreviated "Liggett Tobacco" or "Liggett". Just turn the pages and glance over it.

(Witness examines paper.)

1422

Q. Have you looked it over? A. Yes, sir.

Q. With reference to those shipments that I have referred to, to Liggett & Meyers Tobacco Company, sometimes referred to as "Liggett Tobacco" or abbreviated "Liggett", assuming all those shipments are shipments by the French Line on the vessels named and on the dates indicated, can you tell me whether they are shipments of cigarette paper in bobbins or rolls—

Mr. Nolan (Interposing): Don't answer.

Defendant's Exhibit C. 1423

By Mr. Holmes:

(Continuing question) —on the one hand, or whether they are cigarette books—that is, booklets out of which a consumer rolls his own—on the other hand? Bear in mind that I am asking you if you can tell—not whether the fact is, but whether you know?

Mr. Nolan: If he just answers yes or no, I will not object; before the next question I will state my objection. 1424

Mr. Holmes: All right. Do you know or can you tell?

A. I think I can. Unless I would be able to explain why, I could not answer that question. I can tell.

Mr. Nolan: Before the other question is asked, may I cross-examine him?

Examiner Arthur: Is there some definite reason why you cannot cross-examine in the regular way?

Mr. Nolan: But the witness has testified 1425 from something from a record which is not original. I have a right to cross-examine him whether or not there is an original record that will supply that.

Examiner Arthur: I just want to bring that out; that is all.

Cross Examination by Mr. Nolan (on this one point):

Q. Is there a record—will the books of Liggett & Meyers Tobacco Company show exactly what

1426 *Defendant's Exhibit C.*

the shipments show on this invoice? A. Many of our records extending back that far are destroyed. I assume that at St. Louis they have the original bills which would show.

Q. As a matter of fact, in the Custom House in New York City there are original bills of lading which will show exactly what these items represent, will they? A. In the Custom House, there are entries which will show that.

1427 Mr. Nolan: Then, I object to notations by this witness until the original is produced.

Examiner Arthur: On what grounds?

Mr. Nolan: That it is not the best evidence.

Direct Examination by Mr. Holmes—Resumed:

Q. Perhaps I might frame my next question. Mr. Widmer, did Liggett & Meyers Tobacco Company during the years 1918, 1919, 1920 and 1921 ever import any cigarette paper in books
1428 or booklets in certaiu shipments in which the Liggett & Meyers Tobacco Company was itself the direct consignee? A. No.

Q. Are you able to state, therefore, that in this Exhibit B, where the Liggett Tobacco Company or Liggett & Meyers Tobacco Company appears as the consignee of a product which we will assume is admitted to be either cigarette paper in bobbins or otherwise in bulk, or, on the other hand, cigarette books—are you able to state that such shipments are of necessity cigarette paper otherwise than in books? A. Yes, sir.

Defendant's Exhibit C. 1429

Mr. Nolan: Objected to as calling for a conclusion and not calling for the best evidence, the witness having testified that the public record shows what is covered by those records in the list.

Examiner Arthur: In view of the fact that the witness has testified directly that there is other evidence or best evidence, this testimony will be admitted for such weight as the Board desires it shall have in its determination of the issue. 1430

Mr. Nolan: May I have an exception noted?

Examiner Arthur: An exception is noted.

Mr. Nolan: And may I have it then noted on the record that a further hearing may be had for the purpose of the respondent in this case producing the records from the custom house?

Examiner Arthur: The matter of a further hearing will be given consideration at the proper time. I mean no offense by that. 1431

Mr. Nolan: The counsel for the respondent now gives notice that an application will be made for a further hearing for the purpose of subpoenaing the records of the Tobacco Products Company, Surbrug & Co., Melechrino & Co., Schinasi & Co., Falk Tobacco Company, and records from the Custom House in New York City, as well as certain records of the American Tobacco Company itself.

Mr. Holmes: Who are Rose & Frank?

1432 *Defendant's Exhibit C.*

A. Rose & Frank are the representatives in this country of Brownstein, Brownstein being a large cigarette paper manufacturer in France. Brownstein not only makes paper in bobbins, but in books. We control in this country the sale of the Tamtam and Riz Tamtam books.

Mr. Nolan: "We" or "he"?

A. Liggett & Meyers.

1433 Mr. Nolan: Won't you just please only answer the question, and we will get along fine. I ask that everything be stricken out except the statement that Rose & Frank represent Brownstein.

Mr. Holmes: Very well.

By Mr. Holmes:

Q. Between the dates March 8, 1919, and January 2, 1921, did Liggett & Meyers Tobacco Company buy cigarette books—that is, little booklets of cigarette papers—out of which the consumer rolls his own cigarettes? A. They did.

1434 Q. From Rose & Frank? A. They did.

Q. What? A. The books known as Riz Tamtam, Riz meaning white, and Tamtam meaning brown paper.

Q. Do you know whether you made purchases during the period I have mentioned from Rose & Frank of importations which they had made during that period?

Mr. Nolan: Now, Mr. Widmer, that is objected to, because that is not in the issue. The question is, bought in France.

(Question repeated by stenographer.)

1435

A. Yes, sir.

Mr. Nolan: Now, I would ask for a ruling so that I may take the objection.

Examiner Arthur: Do you insist on it?

Mr. Nolan: I withdraw my objection. Let the witness answer. He has answered yes. Now, go ahead.

By Mr. Holmes:

1436

Q. Did the Liggett & Meyers Tobacco Company have a contract with Brownstein during this period for cigarette books? A. That is what I tried to explain, Mr. Holmes. There is a tri-party agreement contract between Brownstein, Rose & Frank—the Brownstein agency in New York—and ourselves. The contract binds all three of us for the delivery of books, Tamtam and Riz Tamtam.

Mr. Holmes: That is all.

1437

Examiner Arthur: Will the respondent take the witness?

Cross Examination by Mr. Nolan:

Q. In 1918, 1919, 1920 and 1921 you had this tri-party agreement between Rose & Frank and Brownstein and the Liggett & Meyers Tobacco Company? A. Yes, sir.

Q. Of course, Liggett & Meyers are rivals of the American Tobacco Company? A. Yes, competitors.

1438 *Defendant's Exhibit C.*

Q. Competitors. They are not interested at all in any way by the holding of stock by one corporation of the other? A. Not as far as I know.

Q. Of course, any advantage that Liggett & Meyers would get through any tri-party agreement between Rose & Frank and Brownstein, in your opinion, would be to the detriment of the American Tobacco Company, would it? A. I don't know that I quite understand that question.

1439 Q. Well, any advantage that the Liggett & Meyers Company would have in the purchase of cigarette papers in books in France by reason of the tri-party agreement between Rose & Frank and Brownstein and Liggett & Meyers, would be really to the detriment of the American Tobacco Company, would it? A. Well, I don't know whether it would or not.

Q. Don't you understand, Mr. Widmer, that the purpose of calling you here as a witness today is to show that the American Tobacco Company have been deceived by the French Line in

1440 the shipment of papers from France—

Mr. Holmes (Interposing): I object to that question, Mr. Examiner.

Mr. Nolan (Continuing): —by giving a rate different from the Liggett & Meyers?

Mr. Holmes: If the referee please, that is the purpose of the lawsuit but that is not the purpose of calling the witness. The purpose of calling the witness—

Mr. Nolan: All right, I withdraw the question. Do you understand, Mr. Wid-

1441

mer, that the purpose of this lawsuit is for the American Tobacco Company to show that by reason of the supposed preferential rates given to Liggett & Meyers by the French Line, the American Tobacco Company has lost money?

Mr. Holmes: I object to that as irrelevant.

Mr. Nolan: I think it is very relevant.

Examiner Arthur: That is, you maintain, do you, Mr. Nolan, that this tri- 1442
partite agreement—

Mr. Nolan (Interposing): I don't maintain anything until the witness answers the question, and then I will maintain something.

Examiner Arthur (Continuing): —that this tripartite agreement, if it is any advantage to Liggett & Meyers, would operate to the detriment of the American Tobacco Company?

Mr. Nolan: And I want to know whether or not this witness knows. That is the 1443
reason he has been called here as a witness.

Mr. Holmes: If the referee cares to listen to argument, I may call attention to the fact that it is quite clear that all I want of this witness was to explain what shipments here were shipments of cigarette paper in bobbins out of which cigarettes are made, and that some of these shipments were necessarily shipments of books, and that Liggett & Meyers got a Tamtam

1444 *Defendant's Exhibit C.*

book which was in competition with the American Tobacco Company's Riz La Croix book; and that is all I attempted to prove by this witness.

Mr. Nolan: You have not proved that yet.

Mr. Holmes: I intended to prove the competition. Before that, I had intended to prove that the brand Tamtam was a Liggett & Meyers brand and that they got
1445 it from a French source, so that when it comes to a matter of proving competition, we can show that that brand is in competition with our brand.

Mr. Nolan: I am serious in the question I put, and I ask for a ruling.

Examiner Arthur: Would you not agree, Mr. Nolan, that your question is in direct evidence?

Mr. Nolan: Cross-examination is always more or less a departure from direct examination. That is the purpose of cross-
1446 examination. I admit that cross-examination is entirely in the discretion of the judge, but there must be some liberality in the line of cross-examination.

Examiner Arthur: There should be some liberality; that is true. It does not appear, though, that the question you asked is a gross departure from the evidence given on the direct examination.

Mr. Nolan: Here are a number of concerns who claim that they are in competition. One of them, the American To-

1447

bacco Company, has spent a couple of years in trying to show that they have been cheated and defrauded by the French Line, by the Liggett & Meyers; and the Reynolds Tobacco Company in their line of business have lost an enormous amount of money in selling Lucky Strike cigarettes as against the Chesterfield and the Camel, and they bring the Liggett & Meyers man into court, and the minute I ask him a question, it is objected to. Cross-examination certainly has some liberality to it.

1448

Examiner Arthur: This witness was brought on, I believe—at least his direct testimony was addressed exclusively to the character of the shipments. Now, if, on the other hand, you desired to show something quite removed from that, it is entirely your privilege in the case.

Mr. Nolan: Your Honor is so genial about the way you put these things that it is hard to argue against you.

1449

Examiner Arthur: I want to be entirely liberal with all of you, but it seems this case has dragged very much.

Mr. Nolan: It is one of the most important cases that have been before the Shipping Board, and I don't think you, sir, as examiner, would want the Circuit Court of Appeals in the first place, and the Supreme Court of the United States, to say later that the Examiner did not allow full scope.

Examiner Arthur: I want to be so liberal that I will even lean backwards, but I

1450 cannot see why cross-examination should bring in new matter when you have the privilege to bring it out on direct examination.

Mr. Nolan: This is not new matter; this is the material on which the witness has been examined as to certain brands. I did not bring it out about Rose & Frank or Brownstein; Mr. Holmes did. And if I cannot ask this witness about the arrange-

1451 ment with Rose & Frank and Brownstein and whether or not similar arrangements were attendant, then the cross-examination does not amount to anything.

Examiner Arthur: I will permit the witness to answer that question. The objection is noted. The question—will you state it again?

Mr. Nolan: I will ask a few questions first before.

By Mr. Nolan:

1452 Q. Liggett & Meyers made no direct shipments from France, but purchased their papers through Rose & Frank in New York? Is that correct? A. No; all of the books we purchased and much of the paper we purchased came through Brownstein and through Rose & Frank as their agents, but we bought other paper in France, some of which we imported direct.

Q. Have you got Exhibit B? Can you tell which of the shipments shown on Exhibit B were purchased direct or through Rose & Frank? This is complaintant's Exhibit B on the original ship-

1453

ments. A. All of the shipments marked "Rose & Frank" were purchased through Rose & Frank under their contract to bring the paper into New York and pay the duty and bills for the paper f. o. b. New York. These items marked "Liggett & Meyers Tobacco Company" were probably, as far as I can make out, direct shipments to us.

Q. Then, referring to complainant's Exhibit B on the original record which you have before you, as to the items marked "Liggett & Meyers" there will be some record in Liggett & Meyers

1454

audit showing whether those were direct purchases from Brownstein and the class of goods covered by them and the price paid, will there? A. I don't think you will find any records there showing any shipments by Rose & Frank to Liggett & Meyers Tobacco Company bearing these initials "Liggett & Meyers Tobacco Company." Those shipments as represented by the name "Liggett & Meyers" would almost certainly be direct importations of our own.

Q. By "our own" you mean Liggett & Meyers? A. Yes, sir

1455

Q. Then, I may ask you, referring again to complainant's exhibit on the original record which you have before you, referring to every item there shown as a shipment to Liggett & Meyers Tobacco Company, is there a record in Liggett & Meyers Tobacco Company which will show the nature of the goods, the date of shipment and the amount paid? A. I don't know that. I have already said that many of our records were destroyed. All of my records were destroyed further back than a year. There may be billing in St. Louis; I cannot tell you.

1456 *Defendant's Exhibit C.*

Mr. Nolan: What do you mean by "your" records?

A. The records of the Supply Department.

Q. You are in charge of the Supply Department? A. Yes, sir.

Q. But the company itself in St. Louis would have the records which would prove each one of these items? A. I cannot tell you that; I don't know.

1457 Q. Then in testimony here you are only testifying assuming that Exhibit B is correct? A. Oh, no; I am certain that I am correct as far as the shipments of Rose & Frank are concerned, because all of our shipments were in that way.

Q. I am not asking you about Rose & Frank; I am asking about the shipments that appear there as Liggett & Meyers. A. If they are taken from the French Line, they must have,—

Q. I am not asking that. I am asking whether or not you can testify as a witness that the ship-

1458 ments appearing there came to Liggett & Meyers through Rose & Frank or direct from Liggett & Meyers? A. I don't know whether I get you right, Mr. Nolan. The shipments that appear in the name of Liggett & Meyers Tobacco Company did not come through Rose & Frank. The shipments through Rose & Frank came to Rose & Frank, and some of them were billed to ourselves.

Q. Those that appear other than in the name of Liggett & Meyers Tobacco Company, you cannot testify to, can you? A. No, sir.

Defendant's Exhibit C. 1459

Mr. Nolan: I ask that all of this witness's testimony as to any shipments to Liggett & Meyers be stricken out.

Mr. Holmes: Does the Examiner desire to hear arguments on that?

Examiner Arthur: I would like to have comment by counsel for complainant.

Re-direct Examination by Mr. Holmes:

Mr. Holmes: What I sought to prove by this witness as to shipments indicated as 1460
being consigned to Liggett & Meyers Tobacco Company, was simply this: All such shipments, assuming this exhibit "B" to be a list of shipments of cigarette paper of one kind or another by the French Line on the ships mentioned and on the dates mentioned, would not be cigarette paper in books, because the Liggett & Meyers Tobacco Company was not the direct consignee in case of cigarette paper in books, the only other kind of cigarette paper 1461
being cigarette paper in bobbins or rolls to make up or go into the manufacture of cigarettes; that of necessity all of those items in which the Liggett & Meyers Tobacco Company was the consignee must necessarily be cigarette paper in bobbins or rolls, and the witness testified accordingly. So it is axiomatic that by including the one thing, you exclude the other.

Examiner Arthur: Cannot the witness testify of his own knowledge during the period of this complaint, that the ship-

1462 *Defendant's Exhibit C.*

ments of cigarette papers to Liggett & Meyers, such as they may have been, were of a certain character rather than one character?

Mr. Holmes: He has so testified, I think.

Examiner Arthur: Without reference to Exhibit B.

Mr. Nolan: He is not able to identify them. He said some came to Rose & Frank and some to Liggett & Meyers.

1463 Examiner Arthur: But he is an officer of Liggett & Meyers.

Mr. Nolan: He is in charge of the Supply Department in New York, and he says he has not the records before him.

Mr. Holmes: Perhaps I asked the question in a negative way because it was clearer and more orderly, because he has said that there were no shipments of cigarette books in which the Liggett & Meyers Tobacco Co. were the direct consignee. Now, there are only two kinds of cigarette

1464 paper, either cigarette paper in books or in bobbins, that go into the manufacture of cigarettes.

A. There is some cigarette paper brought in the form of sheets from which the manufacturers in this country make books and cut the sheets into leaves, but they are not books.

Mr. Holmes: But that does not enter into this question.

Mr. Nolan: I don't know whether it does or not. Do you know what the bills of lading covering all those shipments represent?

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A. No.

Mr. Nolan: You don't know whether they are in books, spindles, bobbins or rolls?

A. They are in various forms.

Mr. Nolan: Do you know whether the form of shipments in Exhibit B represent books, spindles, bobbins or rolls?

A. I know that they do not represent book shipments to Liggett & Meyers.

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Examiner Arthur: Do you know whether, during the period of this complaint, any cigarette papers which may have been received from the French Line by Liggett & Meyers were not of books?

A. Yes, sir.

Examiner Arthur: In so far, Mr. Holmes, as that exhibit is concerned, I am afraid I will have to exclude the witness's testimony, inasmuch as he says he knows nothing about the shipments specified. On the other hand his general testimony regarding the character of the shipments seems to be of assistance to you, perhaps.

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Mr. Holmes: Mr. Widmer, I show you a copy of Exhibit B, and I ask you to look at the items "Liggett & Meyers Tobacco Company" or "Liggett Tobacco Company." I ask you if any of those items was cigarette paper in bobbins or rolls.

Mr. Nolan: If you know.

A. Assuming that that is the record of ours on the French Line, yes.

1468 *Defendant's Exhibit C.*

Mr. Holmes: Then, the answer is that some of them represent cigarette paper in bobbins?

A. Yes.

Re-cross Examination by Mr. Nolan:

Q. Take Exhibit B. Just look at the items that appear on that under the name of either "Liggett Tobacco" or "Liggett & Meyers", and
1469 tell us which of those you say were bobbins? A. I cannot do that.

Q. Well, assuming, as you just answered the question to Mr. Holmes, that that is correct from the record of the French Line,—assuming that, tell us which of them you can say were bobbins.
A. I would assume that they are all bobbins.

Q. Take the first item, 509, "bill of lading No. 509, Liggett Tobacco Company No. 40, 9,000, 60, 540, Bordeaux," what in that would indicate to you it is bobbins? Please answer me—would in-
1470 dicate to you that that is bobbins? A. Because the importation of paper in bobbins in many cases came direct to the Liggett & Meyers Tobacco Company.

Q. Then, the mere fact that that appears that way is no assumption, because the French Line says that is the importation, would indicate it is bobbins, would it? A. Well, this exhibit has been shown me as being taken from the French Line.

Q. Who showed it to you? A. Mr. Holmes, and you are now.

Q. Mr. Holmes told you that came from the French Line? A. I think Mr. Holmes said so.

Defendant's Exhibit C.

Q. He told you those things represented bobbins? A. No, nothing of the kind.

Q. Take this first line: what, in all the words and figures there indicates it is bobbins? A. Because of the fact, as I say, all the entries made there would show that it is bobbin paper. There is a record I got from Rose & Frank yesterday.

Q. We are not asking that. What on this record shows you it is bobbins? A. The mere fact that all the paper that came from this country to Liggett & Meyers was bobbins.

Q. But Liggett & Meyers were working under a tri-party agreement, were they? A. With Rose & Frank.

Q. And Brownstein? A. And Brownstein.

Q. And all the paper bought was bought under that tri-party agreement? A. No, it was not.

Q. Now, we will get down to something. Go ahead. What is the explanation why, under a tri-party agreement with Rose & Frank, you bought some goods that he bought from Brownstein? A. There is a difference between books and bobbin paper. The agreement we had with Rose & Frank and Brownstein is for the purchase of books only. We also purchased cigarette paper in bobbins from Rose & Frank and from Brownstein.

Q. And is there a different price on paper in bobbins and reels than in books? A. Surely.

Q. Then, when you buy from Rose & Frank, you buy here in New York,—Rose & Frank bring the goods in and you buy from them under the tri-party agreement? A. Yes, sir.

Q. And the price is made in New York under

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1474 *Defendant's Exhibit C.*

that course? A. The price is made with Rose & Frank.

Q. And the bobbin and reel paper— A. Is made in New York also.

Q. And the price is not made abroad in France? A. No.

Q. Have Rose & Frank got a copy of that agreement, do you think? A. Oh, yes.

Q. You have not got a copy with you? A. Not with me.

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Mr. Nolan: That is all.

Mr. Holmes: All right. Thank you very much. (Witness left.)

Examiner Arthur: Is there another witness, Mr. Holmes?

Mr. Holmes: I have none now.

Examiner Arthur: Mr. Hill, I believe, is to resume the stand for cross examination by Mr. Nolan. Will Mr. Hill take the stand please? He has already been sworn.

Mr. Nolan: I am going to ask the court's indulgence, as I said yesterday and this morning, that Mr. Hill's cross examination be put for some day next week that will be convenient to the court and to Mr. Hill and also to Mr. Parker and Mr. Holmes, and lastly to myself. I feel that his testimony is of the character that I should be given an opportunity to have the stenographer's minutes before I go further with this examination.

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Examiner Arthur: I will have to state that I know there could not be a hearing

next week. In fact, it would be two or three weeks at least.

Mr. Nolan: If the court could set Friday. Tomorrow I have two matters on; one before Peter B. Olney on an important waterfront fight in the morning, and one for the Windsor Manufacturing Company at 2:30 before Mr. Robson. But as far as Friday is concerned, I would be free, or any day next week, and I would ask the court's indulgence for the examination of 1478
Mr. Hill.

Examiner Arthur: I will say now that another hearing could not in any event be held either on Friday or any day next week, because of other assignments in Washington and elsewhere during that time. In fact, I am not sure that another hearing could be set within this month.

Now, your reason, Mr. Nolan, for—you don't think in any event you could finish your case this afternoon?

Mr. Nolan: I could not finish the re- 1479
spondent's case this afternoon, because, frankly, I intend to produce from the Custom House the consular invoices and bills of lading of each one of the shipments that have been referred to.

Examiner Arthur: What is the objection to going ahead with Mr. Hill's testimony?

Mr. Nolan: Purely my personal objection that I hesitate to cross examine a man like Mr. Hill, who is conversant with his company's business so thoroughly, on a technical question of this sort, without

1480 first having the stenographer's minutes before me. Frankly, I admit that is not a good excuse; but I will want to produce on Mr. Hill's examination certain contracts between his company and the concerns in France for the manufacture of paper.

Mr. Holmes: They are already in evidence.

Mr. Nolan: I will want to use some of these bills of lading in connection with Mr. Hill's testimony.

1481 Examiner Arthur: In the first hearing there were some contracts put in along that line. I suggest that if you will look at that again,—

Mr. Nolan: They are the very ones; but frankly, since I came out of court yesterday afternoon, I have not looked at them yet. I am throwing myself on the mercy of the court this time.

Examiner Arthur: On the point that your reason seems to be that you wish to

1482 consult the transcript of record of Mr. Hill's testimony, frankly I will have to say that that is not a sufficient reason.

Mr. Nolan: I know it is not.

Examiner Arthur: In view of the other duties which the Board has given me, I could not,—and, be as courteous as I wish to be,—I could not extend you that privilege. Surely, the other side might insist upon the transcript of the record of your cross examination before another hearing, and so on. So you see it is quite impossible.

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Mr. Nolan: I realize that, and that is why I put it plainly to the court that I am throwing myself on the mercy of the court.

Examiner Arthur: I am sorry, but I don't see how I can extend Mr. Hill's cross examination over. So I will have to ask you to proceed with him at this time.

Mr. Nolan: Very good, sir. May I ask the court to make this ruling: That Mr. Hill shall be produced again when I am able to subpoena from the Custom House 1484 the records of consular invoices? I am going into it as a matter of record.

Examiner Arthur: You have a right to subpoena.

Mr. Parker: We all have a right to subpoena.

Mr. Nolan: It is further than subpoena. A court of justice can always order the witness without further service of subpoena, and I don't think I should have to hunt around the American Tobacco Company's offices and have my clerks thrown 1485 out.

Mr. Parker: Of course, but Mr. Hill will be available. The present program seems to me to be Mr. Hill's cross examination. That is the orderly procedure, and the motion you make at the end will wait.

Mr. Nolan: My cross examination will be very short, this afternoon, because I have to have other papers to finish the cross examination. I want the court now to instruct the witness, as the court has a

1486 *Defendant's Exhibit C.*

right to do, that he shall appear on an adjourned date, without service of subpoena.

Mr. Hill: I am going abroad the middle of June.

Mr. Nolan: I will agree to go to Mr. Hill's office before a stenographer that the court will appoint, and finish any cross examination.

Examiner Arthur: You can take a deposition, of course, under the rules of practice.

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Mr. Nolan: But that puts the burden of serving subpoenas on me, and in one case recently a lot of witnesses could not be served. I have the witnesses before the court, and I want the court to order the witness to appear on a date certain.

Examiner Arthur: I cannot direct at this time any day certain. As I said, I don't know and cannot testify on what date a further hearing will be held.

Mr. Hill, do you expect to be abroad for any period of time?

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Mr. Hill: I do; for about five weeks after June 13.

Examiner Arthur: Five weeks after June 13. Then, if a further hearing in this proceeding is not held before June 13, it will not be held until the—

Mr. Hill (Interposing): 25th of July.

Examiner Arthur: Subsequent to five weeks after June 13th.

Mr. Nolan: Perfectly fair; and I think if Mr. Hill will come on a letter from Mr. Holmes, that is all I want.

Defendant's Exhibit C.

Mr. Hill: I will come.
Mr. Nolan: All right.

Cross Examination of Mr. Hill by Mr. Nolan:

Q. You are President of the American Tobacco Company? A. Yes, sir.

Q. And as President of the company, what are your duties? A. A general executive situation in connection with all the affairs of the company.

Q. That includes the Sales Department? A. Yes, sir. 1490

Q. And the manufacturing end? A. Yes, sir.

Q. Advertising end? A. Yes, sir.

Q. The foreign end? A. Yes, sir. I don't mean that I personally direct every activity, but they are all referred to me and I am familiar with them all.

Q. There are various committees that take charge of various departments and who read reports to you? A. No, I am a member of all those committees.

Q. As President and Chairman? A. Yes, sir. 1491

Q. And the committees report everything to you? A. The committees make reports at the meetings.

Q. I don't mean all details, but the general results to you? A. Yes, sir.

Q. And that includes the Foreign Department? A. Yes, sir.

Q. The American Tobacco Company buys tobacco abroad in the various countries, Turkey and Greece? A. Yes, sir.

Q. And the Chairman of the committee has

1492 *Defendant's Exhibit C.*

charge of that? A. As Chairman of the committee, I have charge of that.

Q. And it has cigarette papers made in France? A. Yes, sir.

Q. Has the company any mills of its own in France? A. Yes, sir; we have a paper mill.

Q. Where is it? A. At Quimperle, Province of Brittany.

Q. Is that the only mill you have in France? A. Yes, sir.

1493 Q. And all the cigarette papers that are shipped to the American Tobacco Company from France come from that mill? A. All the bobbins. The books are shipped from the La Croix people.

Q. That is a trade name,—La Croix? A. It is a trade name and also a firm name, like Croix Fils is the name of the firm Fils.

Q. Do you take the entire output of La Croix Fils? A. No, sir.

Q. Have you a yearly contract with the La Croix people? A. We have a perpetual con-

1494 tract with the La Croix people.

Q. Is that in writing? A. Yes.

Q. Have you a copy in the New York office? A. Yes.

Q. And that is the contract submitted here at the original hearing?

Mr. Holmes: That was in the original hearing.

A. I don't know.

Mr. Holmes: That is my recollection.

Mr. Nolan: Then, all the paper in bob-

1495

bins and reels shipped to the American Tobacco Company from France came from your own mill?

A. Yes.

Mr. Parker: Mr. Nolan, as against a technical mistake that you may lead Mr. Hill into or he may lead himself into, he means by that a French corporation of which the American Tobacco Company owns the stock.

1496

Mr. Nolan: Make any statement on the record.

Mr. Parker: I am.

Mr. Nolan: I don't want to mislead him, and I think Mr. Hill and yourself understand. I just want the real facts.

Q. Then the cost price of any paper in bobbins or reels is what the cost price would be the French corporation which manufactures it? A. No, because the French corporation has other stockholders, and the price arrangements as to what we pay are arranged at different periods based upon cost with a profit to the mill.

1497

Q. That is, the cost in France with a profit to the mill? A. Yes.

Q. And no other concern except your own concern purchases the product of that mill? A. Yes, this French mill sells to other people in this country.

Q. What people? A. Liggett & Meyers and Lorillard. Those two I know about.

Q. They don't sell the paper to Liggett &

1498 *Defendant's Exhibit C.*

Meyers and Lorillard at the same price as to the American Tobacco Company? A. Exactly.

Q. You are quite sure of that? A. Yes.

Q. No difference in the price? A. Not that I know of.

Q. How much stock of the French corporation does the American Tobacco Company own? A. Two-thirds.

1499 Mr. Parker: Mr. Nolan, it is stated to me that maybe a misapprehension is going on. Mr. Hill is stating a condition as at present existing, and Mr. Holmes tells me that that condition did not exist during the period.

Mr. Holmes: I don't know the date of the organization of that company.

Mr. Hill: I can tell you. Its five years expired last November, the five years from the origin of the Quimperle plant, which was in 1920.

1500 Mr. Holmes: So part of this company was before the Quimperle mill and part of it after?

A. Correct.

Mr. Nolan: That is, some time in 1919 the American Tobacco Company purchased two-thirds interest in the stock of the French concern?

A. I cannot recollect the date.

Q. The records of the American Tobacco Company will show that, of course? A. Yes.

Defendant's Exhibit C.

1501

Q. Did the American Tobacco Company buy any books—papers from Brownstein? A. No, sir.

Q. In the sale of the products of the American Tobacco Company in the United States,—that is, the product of cigarettes,—your chief cigarette product is the Lucky Strike, is it? A. That is our largest brand.

Q. You sell other brands? A. Yes, sir.

Q. What are they? A. Sweet Caporal, Pall Mall, Omar, Lord Salisbury,—I can give you a great many other names.

1502

Q. Go ahead. A. I cannot give you all, because I cannot remember them. I can furnish them.

Mr. Holmes: In your testimony, remember that you are testifying as to the conditions in 1919 and 1920.

A. I am not sure they were all in existence at that time.

Mr. Nolan: You were President of the company in 1919, 1920 and 1921, were you?

1503

A. Yes, sir.

Q. In 1919, 1920 and 1921, what other brands besides Lucky Strike did the American Tobacco Company sell in the American market? A. Sweet Caporal, Pall Mall, Mecca, Hassan,—I am not sure about Omar, whether that was at that time or not.

Q. Did you also sell the loose tobacco in packages? A. Yes, sir.

Q. For the purpose of making cigarettes? A.

1504 *Defendant's Exhibit C.*

Yes, we sold Bull Durham tobacco, which is largely used for rolling cigarettes.

Q. Did you have anything to do with the Melechrino? A. Not at that time.

Q. You now control it? A. Yes.

Q. And you now control Schinasi? A. Yes,—I don't know; we don't control Schinasi, but the few brands that they make,—two brands that I know of.

Q. And you now control the Falk Tobacco
1505 Company? A. No, we don't control all the brands that the Falk Tobacco Company made. We do control a great many brands that the Falk Tobacco Company make, but that was not in effect in 1919 and 1920.

Q. I am asking now about the present time. You also control the Tobacco Products Company now, do you? A. No, sir.

Q. Your company has no interest in that now? A. No, sir.

Q. Only in the Surbrug Company? A. Neither one.

1506 Q. But some of the companies they control, such as Melechrino, Camel brands, and some of the Falk? A. We don't control any of the companies. We control a lease of some of the brands.

Q. Of course, you know that the Tobacco Products Company control the Falk, the Melechrino and the Schinasi? A. I have heard that they did.

Q. Mr. Hill— A. Really, I don't know anything about the affairs of those companies.

Q. You are the President of the American Tobacco Company, and you have taken over the handling of the Melechrino products and some of

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the Schinasi and some of the Falk's? A. That transaction was made entirely on the books.

Q. You are the President— A. Of the American Tobacco Company.

Q. Don't you know that the American Tobacco Company really controls them? A. Controls who?

Q. The Tobacco Products Company, Melechrino, Falk and Schinasi? A. I know absolutely that they do not.

Q. But you have a working agreement whereby you control some brands of the Tobacco Products Company? A. We have a lease with the Tobacco Products Company by which we own for ninety-nine years certain brands. We have nothing to do with the Corporation.

1508

Q. You just have the ninety-nine-year lease? A. On certain brands. The Tobacco Products Company, as a matter of fact, is in operation to-day selling cigarettes.

Q. You merely have the ninety-nine-year lease of certain of the brands which they control? A. Yes.

1509

Q. And the Tobacco Products Company, in turn, controls the Surbrug Company, does it? A. Yes.

Mr. Holmes: What do you mean by "in turn"?

Mr. Nolan: A witness here has testified to that fact.

A. I would not deny it.

Mr. Nolan: And the Surbrug Company does not import some of these papers from France?

1510 *Defendant's Exhibit C.*

A. I don't know.

Q. As Chairman of the various committees of your company, I presume you also have something to do with the arrangements for transfer of funds from New York to France to pay purchases made over there? A. I have now.

Q. And in 1919, 1920 and 1921, were you familiar with the arrangements your company had for purchases in France? A. Yes, sir.

Q. You more or less control and dictated the
1511 policy? A. Yes.

Q. Did the American Tobacco Company in 1919, 1920 and 1921 have its own Traffic Department here in New York? A. Yes.

Q. Did they handle foreign importations? A. Yes.

Q. You never used any forwarding agency here in New York? A. I don't know as to that.

Q. Well, from your experience, you know that the average charge made by a forwarding agency is five per cent. of the amount of the shipment? A. I know we had no such arrangement.

1512 Q. Do you know what it cost for the transfer of francs in 1919, 1920 and 1921? A. No. Our method of transferring francs is that we have three banks in Paris and we keep funds on the other side in those banks constantly; and if we have a bill to pay, we send them a check on a French bank.

Q. You have an agent in France who handles your shipments from that end? A. The factory does it in the case of Quimperle, and the La Croix people do it in the case of Paris.

Q. Take the La Croix people. When they handle the shipment, they would handle it for

you? A. They would handle it for themselves at a price.

Q. At a price payable in France or here? A. In France.

Q. That was during 1919, 1920 and 1921? A. Yes.

Q. With your own factory at Quimperle, what was the arrangement there for paying it? A. They have their own bank account, and they are financially responsible and adequately financed, and they finance themselves. 1514

Q. How would they do? Would they draw on you when they made a shipment? A. Yes, sir, on the making of shipments. They don't make drafts on us; we give them orders on our French bank accounts.

Q. You would give them an order for so many —I don't know how it is done—in tons or pounds or cases? A. It is done by bobbins.

Q. You give them at Quimperle, say, one thousand bobbins. You would pay for that in France? A. At the price fixed.

Q. That is f. o. b. the mill at Quimperle, or the 1515 docks at Havre or Bordeaux? A. I am not sure; I think it is at Quimperle the freight charges carry on; I am quite sure.

Q. Your freight agent would arrange for the railroad freights from either Quimperle or—

Mr. Parker: What do you mean by "agent"?

Mr. Nolan: Whoever is handling it for them. If I am using the word that implies employment, you correct it.

1516 *Defendant's Exhibit C.*

Mr. Parker: That is what I intend to do.

Mr. Nolan: When you send your order to Quimperle, say for 2,000 bobbins, the goods are then put on the railroad train f. o. b. the railroad train at Quimperle? Is that correct?

A. I don't know whether they are hauled from Quimperle. I don't know the details of the freight
1517 transaction.

Q. Who, in your company in New York, would be able to tell just what that freight transaction was?

Mr. Parker: Without wanting to interrupt your cross-examination, has he not already told in this record?

Mr. Holmes: I think Mr. Lucas explained.

Mr. Nolan: I am not satisfied with Mr. Lucas's testimony, as I told you at that hearing. I want to get the records and
1518 books of the American Tobacco Company to find out what goes over the cost.

A. The transaction with our factory at Quimperle is identical with the transaction of the La Croix people. They are both separate institutions, and we buy from each of them and pay them in accordance with the understanding we have.

Q. In order to get the costs of your cigarettes that are made up and sold in the form of a cigarette at La Croix or one of the other brands that you sell, or in order to get the cost of your paper

books that you sell, you have put in the cost price at the mill plus any transportation entry duties here in New York, freighting in New York, and all that?— A. Yes.

Q. —for that cost department here in New York to know what a cigarette costs you, either individually or— A. Yes.

Q. —or what a paper book costs you? They have to take into account all those items? A. Yes.

Q. Where are they kept? A. In the New York office. 1520

Q. Who is the man in your cost department who can come here and testify as to what all these items represent?

Mr. Parker: If you are asking who is the man who could do it, that is a question.

Mr. Nolan: I withdraw the question. Who is the chief cost accountant?

A. Mr. DaCosta.

Q. Who will be able to tell exactly what items have gone into the cost of a cigarette or the cost of a paper bobbin? A. He could if he were asked. I don't know that he could tell them out of his head. 1521

Q. I will write him a letter and ask him to get himself ready. A. He can do that.

Q. As far as the details of the transaction are concerned, from the time the paper in the form of bobbins leaves Quimperle, you don't know? A. Only the result as shown.

Q. And that result would come through your cost accountant in New York? A. Yes.

1522 *Defendant's Exhibit C.*

Q. And as far as the paper coming from Riz La Croix,— A. The same thing.

Q. And as far as the cost of transfer of money from New York to France to keep the bank accounts good over there, that you could have to take from the cost department also, would you? A. No; the accounting department have a record of that.

Q. Who is the head of the accounting department? A. Mr. Taylor, and is the Treasurer.

1523 Q. What is his full name? A. Jesse Taylor.

Q. What is DaCosta's first name? A. F. M., I think it is.

Q. Now, the paper booklets were sold, as I understand it, prior to the increase in duty in February, 1919, at something like $11.00 a thousand. Is that correct—$11.02? A. No, sir. I got it to a $11.00 a thousand basis by taking one-fourth of a hundred.

Q. Before the internal revenue tax went into effect in, I think, February, 1919, what were those booklets sold at per thousand,—not divided into

1524 25 pages? A. Approximately $34.00 or $35.00 a thousand.

Q. Prior? A. Prior to the internal revenue tax.

Q. And after the internal revenue tax was on, what were they? A. I think the price was made $44.00 and some cents per thousand.

Q. Then I made a mistake in making a note on your examination this morning that they were $11.02 per thousand. A. That was brought about by dividing $44.00, which has 100 leaves, by four.

Q. $11.02 per thousand? A. No; $11.02 per thousand, made up of 25 sheets to the unit. The

facts were they never were made up in that unit; they were in sheets of a hundred to the unit, but the books were changed from 100 leaves to the book to 175 leaves to the book. In order that you might get a proper idea of the comparative cost, it was figured out on the basis of 25 leaves to the book. So that when I tell you $11.02 at one particular time for 25 leaves, and change it to $8.00 and something at a later time, it is because the book was changed from 100 leaves to 175, and the comparisons otherwise would not be accurate. 1525 1526

Q. Then, it would be $11.02 per hundred, and not per thousand? A. No; $11.02 for one-quarter of one book of a hundred leaves. I don't know whether I make it clear or not.

Q. I don't know. I am afraid I am a little bit stupid, Mr. Hill. I am afraid I will have to have a diagram to get that straight. A. (At this point an informal explanation of this point was made off the record.)

Q. What other cigarettes did Liggett & Meyers put on the market besides Chesterfield in the years 1919, 1920 and 1921? A. I don't know that they put any other brands on the market, but they had other brands, including Piedmont, Fatima, which were their principal brands. 1527

Q. What other ones did R. J. Reynolds put on besides Camel during the same period? A. I don't know that he put out any, but his principal brand was Camel. He may have put out other brands which have not been successful and therefore whose names I would not remember.

Q. As a matter of fact, Camel and Lucky

1528 *Defendant's Exhibit C.*

Strike are about the two best advertised in the United States? A. Yes, sir.

Q. And selling more or less at about the same price? A. Yes, sir.

Q. In the cost of your cigarettes, what other items did you include besides the cost of the tobacco, the cost of the paper, freight and insurance? A. Well, every item that entered into the cost of manufacture, the overhead at the factory, and freight. I don't know of anything that we
1529 skipped when we put the cost of cigarettes on our sheets.

Q. What I mean is, I see you have on your cost sheets the cost of the tobacco as one item, the cost of the paper as another item, and then a third item of overhead. Are they all separated? A. So far as I am concerned, they are all booked under the cost of the cigarette. Of course, in making up those costs, they have those different items that you speak of; and after the cost of the cigarette is established, then there are added other expenses, such as freight, salesmen,
1530 office, advertising, etc., all the way through. But the cost at the factory is made up and given to me as one figure.

Q. It is not separated into items? A. It is at the factory.

Q. But when it is handed to you as the Chairman of the Committee in charge of that, and you see that the price of the Lucky Strike cigarette, just for the purpose of comparison, is two cents, does that appear on the report to the Chairman of the Committee as at two cents, or one and three-quarters for tobacco and one-quarter for paper? A. It comes to me as two cents.

Defendant's Exhibit C.

Q. Then, in fixing the price of selling at the market, you are figuring on the cost price given by the cost keeper? A. Plus freight, which does not appear in that item.

Q. If the cost keeper says it is two cents, and Liggett & Meyers are selling the Chesterfield for 1-¾ cents, and Reynolds for 1-¾ cents, you don't go into the details that led up to two cents? You simply go ahead and sell it? A. I say, "Go ahead and sell it at 1-¾ cents".

Q. So that we may take as a fair consideration for the purpose of determining what the cost of the cigarette to you is,—that is, to your company, I mean,—everything that enters into it, including advertising, overhead, office expenses, etc.?

Mr. Parker: Make that question a little clearer.

A. I think I have stated that the cost is the cost at the factory. All these items of overhead in the office, and freight, etc., appears on the sheet after the cost at the factory.

Q. As Chairman of your Cost Committee, you have to meet a cut made by somebody else? A. Yes.

Q. When you receive the statement as to what it costs you to put your particular cigarette on the market, the statement you receive does not contain all the items that enter into cost? A. Yes, it does. Not the items, etc., but it tells me the result.

Q. The items differ in—

1534 *Defendant's Exhibit C.*

Mr. Parker: You are misleading him inadvertently. He has said that they contain the item of factory cost, and the items added were not the factory costs.

Mr. Nolan: He says more than that. (At this point Mr. Nolan made a few remarks off the record).

By Mr. Nolan:

1535 Q. When the Cost Committee reports to you the cost price of a cigarette, that merely is the net manufacturing cost? Is that correct? A. Yes.

Q. Then, some other committee reports to you that the cost of freight, insurance, overhead, etc., is so much additional? Explain it in your own language. A. These reports of costs don't come to me from a committee. In the accounting department there is established what we call "cost sheets". They are comparative from month to month and from year to year; and when I look over those cost sheets, which I do every month,

1536 I notice the fluctuations in costs one year as against another, and one month as against another. Now, when a situation arises where the selling price of competitive goods is affected, whether up or down, those cost sheets are examined as to what our attitude in that event shall be. That is all that I can tell you.

Q. In other words, if you are going to meet the competition of the other people, you have got to cut your price, and you determine whether or not you can cut it? A. As a matter of fact, we know that we always can cut it, because our costs pre-

sumably are a little lower than our competitors, —I mean so far as tobacco is concerned, internal revenue stamps, etc., they are all identical. 1537

Q. As far as the purchase of the raw materials and the general charges of the Government for duties, internal revenue, income tax, etc., they are about uniform with the others, except income tax, and that is proportionate to your earnings? A. Correct.

Q. But by reason of a greater amount of sales, your profits might be different from the other concerns? A. That varies. 1538

Q. What would you say during the years 1919, 1920 and 1921 were the total sales of the American Tobacco Company and the total sales of Liggett & Meyers and the total sales of R. J. Reynolds? A. I have no means of knowing the total sales of Liggett & Meyers or R. J. Reynolds. They don't publish them. Our own sales I can approximate from memory.

Q. Well, you don't need to do that. What would you say as to the proportion of the sales of the American Tobacco Company with the sales of Liggett & Meyers, and then again, the proportion of the sales of the American Tobacco Company with the sales of R. J. Reynolds? A. I could not tell you. 1539

Q. Tell me whether the American Tobacco Company has double the amount of sales. A. Of which company?

Q. Of either one. A. I don't think we have.

Q. Do you think your sales aggregate—I mean by "your", the sales of the American Tobacco Company—aggregate three-quarters of the total sales of R. J. Reynolds and Liggett & Meyers?

1540 *Defendant's Exhibit C.*

A. You mean combined? No, sir. As a matter of fact, I think the total sales of Liggett & Meyers and R. J. Reynolds are in excess of the total sales of the American Tobacco Company.

Q. But the American Tobacco Company is greatly in excess of either one standing alone? A. I am not sure of that. I have an idea they are fairly equal,—the three of them.

Q. Liggett & Meyers, R. J. Reynolds and the American Tobacco Company make about the same total of sales in a year? A. Very nearly, I should say.

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Q. I don't mean alone on Lucky Strike as against Chesterfield and Camel. A. I mean the totals, yes.

Q. How many more brands does the American Tobacco Company put out than Liggett & Meyers? A. When you say "put out", I don't understand you.

Q. Then, sell? A. I suppose we have fifty times as many brands as Reynolds, and maybe twice as many as Liggett & Meyers.

1542 Q. Nevertheless, your totals— A. I think the totals of Reynolds are very close to the American Tobacco Company's totals.

Q. Do you sell cigarettes from a list price? A. Yes.

Q. And your tobacco in the same way? A. Yes.

Q. Have you a published list price? A. Yes.

Q. That list price has so much off the list for cash? A. Our list price calls for ten per cent. trade discount and a two per cent. cash discount.

Q. Any other discount off the list price? A. No, sir.

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Q. To anybody? A. No, sir.

Q. Do you sell to the United Cigars Company? A. Yes, sir.

Q. Under a yearly contract? A. No, sir.

Q. No yearly contract with the United Cigars Company? A. No, sir.

Mr. Parker: Just in the interest of time, I think it is entirely irrelevant.

Mr. Nolan: I will show the importance of this later on.

1544

Mr. Parker: I think that that rule of showing the importance later on is wrong. Let us have the thing tidied up first. The issues here are simple, I think.

Examiner Arthur: Give some indication, Mr. Nolan, of just what you are laying the foundation for.

Mr. Nolan: I am laying the foundation to show that this company itself, by its methods of doing business, is cutting down any expense and any loss which is chargeable against us, and taking exactly the same course of business with their own customers against which they are complaining about us. We, for instance, say to Liggett & Meyers, the American Tobacco Company, Reynolds, and all the others, "Gentlemen, pay cash here in France where we have our money before we put our ship out on the sea and run the risk. Where our money is in the bank, where we don't have to insure against the freights earned, where we send our ship

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over carrying your goods and getting the money first, the price is so much; but if you make us carry the risk, make us run the chance of our ship being lost at sea, make us insure our freights, make us borrow our money for the purpose of paying our seamen and sending our ship out to sea, it will cost you so much when you get to New York". I will say that the American Tobacco Company, the complainant in this case, sells to the cash customer ten per cent. off and two per cent. off or one per cent. off. To the fellow who keeps them waiting thirty days, the same as we ourselves do, "You pay the net price list". Now, I think that is extremely wrong.

1547

Mr. Parker: Mr. Examiner, what that might have to do with the issue already determined by the Shipping Board as to what the American Tobacco Company does, of course, counsel has inadvertently misstated it. We don't say to the man who pays after thirty days that he gets no discount. I say it is utterly irrelevant; and if any question has been in your mind heretofore, it must be resolved entirely by Mr. Nolan's statement.

1548

Examiner Arthur: I cannot quite see, Mr. Nolan, how you hope to bring out from the witness anything further than what you have brought out along that line.

Mr. Nolan: I can only bow to the Court's decision and take the usual exception.

Defendant's Exhibit C.

1549

Examiner Arthur: The exception has been noted.

Mr. Nolan: I will suspend the witness's cross examination now until the time that I can produce the bills of lading and invoices as to the items as to which he testified and as to his opinion.

Re-direct Examination by Mr. Parker:

Mr. Parker: I shall have re-direct examination.

1550

Q. Mr. Hill, when did the American Tobacco Company lease from the Tobacco Products Corporation certain brands owned and controlled theretofore by it or its subsidiary? A. I think it was in November, 1923.

Q. Up to that time did you ever have any sort of relations whatsoever—and by "you" I mean the American Tobacco Company—with the Tobacco Products Corporation or any company controlled by it, of any sort or otherwise? A. None whatever.

1551

Q. What were your relations with the Tobacco Products Corporation? Any other or different from that of any ordinary competitor? A. None.

Q. The Tobacco Products Company in November, 1923, at least had a subsidiary,—Surbrug Company,—did it not? A. Yes.

Q. Had you any relations with the Tobacco Products Company—and by "you" I mean your company—other than a lessee under a long-term lease at a fixed rental of a certain brand of business? A. None whatever.

1552 *Defendant's Exhibit C.*

Q. Has the American Tobacco Company at any time had any relations with the R. J. Reynolds Tobacco Company, by stock ownership or otherwise, that would change the ordinary relationship? A. None whatever.

Q. Is the same true of the Liggett & Meyers Tobacco Company? A. It is.

Q. In the period which has been referred to, you bought cigarette paper in bobbins for the use of the American Tobacco Company in making
1553 cigarettes, from either the Quimperle Company or from Pfeiffer, did you not? A. Well, we bought them from Pfeiffer. I don't remember every transaction having been made with Quimperle Company prior to our ownership of the business—our control of the business.

Q. Is it not a fact that your purchases of bobbin paper and papers for the manufacture of goods were all from Pfeiffer during this period—A. Yes.

Q. —until you acquired ownership in Quimperle? A. They were.

1554 Q. Do you recall, Mr. Hill, that that acquisition of control of majority of stock of Quimperle was about January 24, 1920? A. Either 1919 or 1920.

Q. Now, during all of the period in question, the purchase of books was from La Croix Fils? A. We were under obligations to sell no other.

Q. And you kept that obligation? A. We would have to; yes.

Q. Now, in your prices, either from Pfeiffer or from Quimperle or from the La Croix people, were deliveries made f. o. b. either factory or

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from its port—one way or the other? A. They were all made that way—one way or the other.

Q. So in any event, freight was paid by the American Tobacco Company, either in an added purchase price or in—

Mr. Nolan: That is objected to as absolutely incompetent.

Mr. Parker: I think it is entirely competent; it is distinctly defined to this issue.

Mr. Nolan: Let us have the original documents to see how it was paid.

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Mr. Parker: I am asking if he knows.

A. The prices made to us were made for the product, and I don't know whether it was at the factory or the French port, but other charges were added to the bill in some form. I mean by that, that the invoices that came to us were complete up to the port of shipment, whether that was at the factory or at the port of export. Any charges that followed that, we paid in New York.

Q. And during the period in question, freight payments constituted, to the American Tobacco Company's factory or to the American Tobacco Company's depot where it kept and from which it sold its books, an added item of cost? A. Certainly.

1557

Mr. Nolan: That is objected to as calling for a conclusion and not the best evidence.

Mr. Parker: It is distinctly the best evidence; the President of the company knows.

1558 *Defendant's Exhibit C.*

Mr. Nolan: No, he does not; he only has his reports from others.

A. The cost of the paper is put to the factory at the complete cost and is included in the net result I get; but before they can make up that complete cost, they have to figure what the paper cost them.

Examiner Arthur: Mr. Nolan, is it your
1559 idea that documentary evidence in each one of these questions should be submitted in this proceeding?

Mr. Nolan: Absolutely. The Supreme Court of the United States has held in administrative cases that you cannot testify to a generality.

Mr. Parker: It is not a generality; it is a specific statement of a fact.

Mr. Nolan: Of which the man has no particular knowledge; of which some other man has represented him.

1560 Mr. Hill: I beg your pardon; I know that all these items go into the factory cost.

Mr. Nolan: Take this item 540, Exhibit B, Equitable Trust Company, on the steamship Niagara, in July, 1918: How much would you say was the amount of freight on that?

A. I have no idea. The records will show.

Mr. Parker: He is not stating any amount.

Mr. Nolan: He has just given the answer; he says the records would show, and I say that the records are the best evidence, and I object to his testimony on that ground, and may I have my exception noted?

Examiner Arthur: Exception noted.

Mr. Parker: Mr. Hill, the Quimperle company, the majority of whose stock is owned by the American Tobacco Company, at present manufactures more paper than 1562
needed by the American Tobacco Company?

Mr. Nolan: That is objected to.

Examiner Arthur: Is that a fact?

Mr. Nolan: I asked the witness whether or not, during the years 1920 and 1921, they did not have a contract for the entire product, and he said yes, and he said they controlled two-thirds of the stock since then.

Mr. Parker: You asked directly; and if you withdraw the question in your cross, I 1563
will withdraw my question now.

Mr. Nolan: Let the stenographer turn to his minutes; and if my statement is incorrect, I will be glad to have it corrected.

Mr. Parker: You asked the question whether the Quimperle or the American Tobacco Company has been associated with the Lorrilard.

Mr. Nolan: I think he said he had a contract with them for their entire product.—

Let it be taken subject to a correction of the stenographer's notes,—permitted to

1564 *Defendant's Exhibit C.*

be answered subject to correction of the stenographer's notes.

A. It does.

Mr. Parker: Did it sell any of its paper to Liggett & Meyers or Lorrilard during the period in question?

A. I cannot tell that, because we just started the Quimperle company, and they may not at
1565 that particular time have made more paper than we used.

Q. Did it sell to Liggett & Meyers or Lorillard before January 1, 1921? A. I do not know; I cannot tell. As soon as we had a surplus of paper, we sold it.

Q. But there was no community of interest between the Quimperle company or the American Tobacco Company and either of the companies you mentioned? A. A community of interest existed between the Quimperle and the American Tobacco Company, but none between anyone else.
1566 Q. But none between either of those and the Liggett & Meyers? A. None whatever.

Mr. Nolan: I have no further cross, subject to a later day when I can have the invoices and the bills of lading.

Mr. Parker: Now, as I understand it, the cross-examination is completed, save only as questions may arise incident to any of the records produced by Mr. Hill, and I should like to have a list of the records that he seeks to introduce.

Mr. Nolan: Not any of the records produced by Mr. Hill, but any records I may subpoena or require Mr. Hill to produce?

Mr. Parker: Could not they have been produced?

Mr. Nolan: No; some were not in his control.

Mr. Hill: None in my shop.

Mr. Parker: I desire only the Examiner's rules, and I think he particularly ruled that the orderly procedure is a direct examination followed by cross-examination. 1568 Now, this cross-examination has terminated; but the precise purpose of the counsel of the French Line will be accomplished if he is to resume his cross-examination for all purposes. I think there ought to be now stated a limit of that further cross-examination.

Examiner Arthur: The privilege of the counsel for the respondent to continue the cross-examination upon further hearing is restricted—

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Mr. Nolan (Interposing): To the documents which may be produced for such cross-examination.

Examiner Arthur: And does counsel for complainant wish Mr. Nolan to state at this time approximately what those documents will be?

Mr. Parker: I do.

Mr. Nolan: Do you order me to do that?

Examiner Arthur: No, I cannot order you to do that.

Mr. Nolan: Subject to the production

1570 *Defendant's Exhibit C.*

of the documents, counsel for the respondent states that he expects to cross-examine this witness as to the contracts between the American Tobacco Company and various French houses manufacturing paper, whether under contract or as part of an organization controlled by the American Tobacco Company; as to the cost sheets of the American Tobacco Company entering into the manufacture of not only the
1571 cigarette Lucky Strike but all other cigarettes and tobacco products of the American Tobacco Company, and as to all invoices and bills of lading for every shipment shown on Exhibit B; and also as to certain invoices and bills of lading with respect to the Liggett & Meyers Company, R. J. Reynolds & Company, and Rose & Frank, and a certain contract connected with Brownstein of France, the manufacturer of certain cigarette papers.

Examiner Arthur: Does that give you
1572 the information which you desire, Mr. Parker?

Mr. Parker: I have no objection to the listing, and shall object to any double cross-examination going beyond what is contemplated in the list; but this is by no means to be taken as an admission that many of the items mentioned by counsel for the respondent—or indeed any of them —are relevant to this investigation or will ever be subject to examination by counsel for the respondent.

Examiner Arthur: One thing more, as to

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the disposition of the transcript of the record: Under the rules of practice of the Board, one copy of the transcript of record is available and is to be furnished by the Board to the parties; but where more than one counsel appears for one of the parties, it is desired that there be designated the counsel to whom the single transcript of the record is to be sent.

Mr. Holmes: Well, if you will send it to J. H. Holmes, all right for the counsel.

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Examiner Arthur: If there is no further business,—

Mr. Parker: May I ask the Examiner as to what is the adjournment at?

Examiner Arthur: I really cannot say.

Mr. Parker: Then, it is adjourned at the call of the master.

Examiner Arthur: Without date.

Mr. Parker: That does not mean permanently, but without fixed date.

Mr. Nolan: Sine die.

Mr. Parker: I am perfectly willing to adjourn sine die.

1575

Mr. Holmes: In the event that after reading the record, it will be desirable to call the head of the supply department of the R. J. Reynolds Tobacco Company, or Mr. Williams, its General Counsel, can the hearing be held at Washington or here? It might be a convenience for the attorneys if it were held in Washington. We may concede it to be necessary to supplement the proof, or in objecting proof that

1576 *Defendant's Exhibit C.*

certain shipments indicated on Schedule B as to the Equitable—supplement that by direct testimony from the supply department or the General Counsel. I was wondering if the Examiner would fix that hearing in Washington, where Mr. Robb is associated with us, which would be convenient to R. J. Reynolds, or fix it in New York.

Mr. Nolan: It won't make a whole lot of
1577 difference to me, provided you don't hold it on the 1st, 2nd or 3rd of June. At any other time I will go to Washington on twenty-four hours' notice. I would rather have it here, of course; but for the convenience of the Examiner and the witnesses at Washington, I am willing to go.

Examiner Arthur: How about the other witnesses?

Mr. Nolan: But that means holding another hearing and taking my testimony, because my testimony will be taken right
1578 here in New York.

Mr. Parker: As I understand it, the next hearing will be limited to the further cross examination of Mr. Hill.

Mr. Nolan: Mr. Parker, I have not been disagreeable with you. I am going to ask you whether or not the complainant's case is closed?

Mr. Parker: It is not closed after the court—

Mr. Nolan: The court can always have the case closed except for taking—

Mr. Parker: This case is not closed.

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Mr. Nolan: You are getting so technical that I will have to take the same attitude.

Examiner Arthur: It would seem that the temper of the Board would be to finish this case in one more hearing.

Mr. Nolan: I think my case will take probably two days. I will go to Washington for one or two witnesses that live in that direction if the Board orders it, but please don't ask me to bring all my witnesses down to Washington. That would

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be extremely inconvenient.

Examiner Arthur: And the records.

Mr. Nolan: And the records,—I would have to bring all those records. Mr. Hill does not want to go to Washington to be further cross examined.

Mr. Hill: I would prefer not.

Examiner Arthur: Gentlemen, if there is no further business, we will adjourn, subject to further hearing.

Mr. Parker: To be fixed by you?

Examiner Arthur: Yes.

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Mr. Parker: And there will be taken up then the cross examination of Mr. Hill?

Examiner Arthur: Yes.

(Whereupon the hearing adjourned at 5:00 P. M.)

1582

Note as to Exhibit A Before the Shipping Board.

Complainant's Exhibit "A" before the Shipping Board, which was offered in evidence as part of Defendant's Exhibit "C" on the trial, is not set forth as part of Defendant's Exhibit "C" in the Record, for the reason that it is the same as Exhibit "D", which was annexed to the complaint in the suit herein and which is set forth in the Record at page 28 of this Record.

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Defendant's Exhibit C.

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 27th day of July, 1926.

Formal Complaint Docket No. 13,
American Tobacco Company

v.

1586

Compagnie Generale Transatlantique (French Line).

WHEREAS, On December 29, 1925, the Board entered its report and order in the above-styled proceeding, awarding reparation to said complainant in the sum of $47,856.98 and interest thereon; and

WHEREAS, After correcting clerical errors of complainant duly swown, the sum to which complainant is entitled as an award of reparation is 1587
$54,030.82 and interest thereon; now, therefore,

IT IS ORDERED, That said report and order of the Board of December 29, 1925, is modified to award as reparation on account of unlawful transportation charges exacted the sum of $54,-030.82, with interest thereon at the rate of six per cent per annum computed from the respective dates of payment by complainant of said

1588 *Defendant's Exhibit C.*

charges as specified in column numbered 24 of amended Exhibit A of record.

By the Board:

(Signed)
SAMUEL GOODACRE,
Secretary.

(Seal of the U. S. Shipping Board)

1589

A True Copy:

SAMUEL GOODACRE,
Secretary.

1590

Defendant's Exhibit C. 1591

U. S. SHIPPING BOARD,

DIVISION OF REGULATION.

DOCKET NO. 13.

AMERICAN TOBACCO COMPANY,

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE).

Submitted May 24, 1923. Decided July 17, 1923.

1592 Charges exacted for transportation of collect shipments unduly prejudicial to complainant, unduly preferential of its competitors, and unjustly discriminatory, in violation of sections 16 and 17 of shipping act, to extent they exceeded prepaid charges on like shipments from and to the same ports, plus such additional costs as carrier was compelled to absorb over and above those accruing in connection with prepaid shipments.

1593 Extent of injury, if any, to which complainant subjected not afforded by this record, and case assigned for further hearing in respect to any such injury and the amount of reparation to which complainant may be entitled.

JONATHAN HOLMES for the complainant.

JOSEPH P. NOLAN for the respondent.

REPORT OF THE BOARD.

Proposed report in this proceeding was served upon the parties, and exceptions thereto filed on behalf of the respondent carrier have been given careful consideration.

1594 *Defendant's Exhibit C.*

The complainant in this case is a New Jersey corporation engaged in the manufacture and distribution of tobacco products and cigarette papers, with principal offices in New York, N. Y. The respondent is a corporation organized and existing under the laws of the Republic of France, having an office in New York, N. Y., and is engaged as a common carrier in the transportation of property between ports in the United States and France, in which common-carrier
1595 capacity it is subject to the applicable provisions of the Federal shipping act of 1916.

By complaint filed under authority of section 22 of the shipping act the American Tobacco Company alleges that in respect to certain shipments transported by the respondent steamship company it was subjected to undue and unreasonable prejudice and disadvantage and to the payment of unjustly discriminatory rates, in violation of sections 16 and 17 of that statute. Inasmuch as it was shown at the hearing that the alleged unlawful charges of the carrier are no
1596 longer exacted, that part of the complaint requesting the board to order the discontinuance thereof may be disregarded. Consideration of the case in this report, therefore, will be confined to a determination of the issue of unjust discrimination as relates to the charges of the carrier in the past. It should also be noted at this point that if unjust discrimination is found to have existed, the question whether the complainant is entitled to reparation will be determined from evidence to be submitted at a supplemental hearing.

According to the record, it appears that during the period April 7, 1919, to January 3, 1921, there

were carried for the account of the complainant by the French Line from Bordeaux and Havre to New York 279 shipments of cigarette papers in books and cigarette paper in bobbins, for which service freight charges in the total sum of $99,755.47 were collected upon delivery at destination. It is shown by the evidence that these charges were calculated upon a fixed basis of 5 francs to the dollar in New York, and that on prepaid shipments of identical commodities carried for other of its patrons from Bordeaux and 1598
Havre to New York during the same period, and in many instances upon the same vessel, the respondent accepted payment in France of freight charges in francs at the current rate of exchange. The result was that the complainant paid more than its competitors for transportation of the same character of commodity from and to the same ports. Thus, for illustration, the freight on cigarette papers on December 19, 1919, was 60 francs per cubic meter. With respect to a shipment of 12,890 cubic meters of this commodity covered by bill of lading issued on that date 1599
the complainant paid as freight upon arrival at New York on January 5, 1920, the sum of $154.68, or at the rate of $12 per cubic meter. At the current rate of exchange of 11.18 francs per $1, as shown in the table following, it is seen that the charge to complainant's competitors in connection with shipments carried on the same vessel was but $5.36 per cubic meter, or $6.64 per cubic meter less than the amount paid by complainant. The difference between the charges on all shipments carried for the complainant on the basis of

Defendant's Exhibit C.

5 francs to one dollar and what those charges would have been on the basis of the actual rate of exchange in effect on the dates such shipments were made is alleged to be $53,840, which amount is claimed as reparation.

Rate of exchange at port of origin on date of bill of lading.

Date.	Francs per dollar.	Dollar per franc.	Date.	Francs per dollar.	Dollar per franc.	Date	Francs per dollar.	Dollar per franc.
1919.			1919.			1920.		
Apr. 7.....	5.88	0.1701	Dec. 27.....	10.54½	0.0948	July 23.....	13.14	0.0761
Apr. 22.....	6.02	.1661	Dec. 30.....	10.74½	.0931	July 30.....	13.07½	.0765
Apr. 25.....	6.11	.1637				July 31.....	13.10½	.0763
Apr. 26.....	6.08	.1645	1920.			Aug. 4.....	14.04	.0712
May 17.....	6.45	.1550	Jan. 5.....	10.75½	.0930	Aug. 7.....	13.93	.0718
May 21.....	6.64½	.1505	Jan. 6.....	10.75	.0930	Aug. 14.....	13.82	.0723
May 22.....	6.63	.1508	Jan. 10.....	11.14	.0898	Aug. 20.....	14.12	.0708
July 9.....	6.84	.1461	Jan. 17.....	11.57	.0864	Aug. 21.....	14.12	.0708
July 10.....	6.87	.1455	Jan. 31.....	13.22	.0756	Aug. 26.....	14.19	.0705
July 19.....	7.07½	.1413	Feb. 13.....	14.33½	.0698	Sept. 8.....	14.82½	.0675
July 30.....	7.26	.1377	Feb. 15.....	14.11	.0709	Sept. 10.....	14.85½	.0673
Aug. 2.....	7.28	.1374	Feb. 24.....	14.24½	.0702	Sept. 24.....	14.84	.0674
Aug. 7.....	7.74	.1292	Feb. 29.....	14.29½	.0700	Sept. 25.....	14.84	.0674
Aug. 15.....	7.79½	.1283	Mar. 10.....	13.44	.0744	Sept. 27.....	15.01	.0666
Aug. 20.....	8.17½	.1223	Mar. 13.....	13.41½	.0745	Sept. 29.....	14.91½	.0670
Aug. 23.....	8.17	.1224	Mar. 23.....	14.93½	.0669	Oct. 2.....	14.84½	.0674
Sept. 11.....	8.40½	.1190	Mar. 26.....	14.40	.0694	Oct. 12.....	15.30	.0654
Sept. 18.....	8.74	.1144	Mar. 27.....	14.40	.0694	Oct. 16.....	15.40	.0649
Oct. 3.....	8.44½	.1183	Mar. 30.....	14.90½	.0671	Oct. 18.....	15.45	.0647
Oct. 4.....	8.41½	.1188	Mar. 31.....	14.97	.0668	Oct. 25.....	15.49½	.0645
Oct. 10.....	8.49½	.1177	Apr. 7.....	15.34	.0652	Oct. 30.....	15.65½	.0639
Oct. 18.....	8.62½	.1159	Apr. 8.....	15.26	.0655	Nov. 9.....	17.29	.0578
Oct. 25.....	8.66	.1154	Apr. 10.....	15.81	.0633	Nov. 24.....	16.40	.0610
Oct. 27.....	8.61½	.1161	Apr. 17.....	16.22	.0617	Nov. 25.....	16.71½	.0598
Oct. 28.....	8.67½	.1153	Apr. 24.....	16.63½	.0601	Dec. 2.....	16.45	.0608
Nov. 8.....	9.01½	.1109	Apr. 30.....	16.66½	.0600	Dec. 6.....	16.79½	.0595
Nov. 12.....	9.54	.1048	May 22.....	13.90	.0719	Dec. 18.....	16.73½	.0598
Nov. 13.....	9.34	.1071	May 29.....	13.75	.0727	Dec. 23.....	16.83½	.0594
Nov. 18.....	9.61	.1041	June 7.....	12.98	.0770	Dec. 25.....	16.83½	.0594
Nov. 22.....	9.61½	.1040	June 8.....	12.99½	.0769			
Nov. 24.....	9.60	.1042	June 14.....	13.22½	.0756	1921.		
Nov. 29.....	9.75½	.1025	June 19.....	12.50½	.0800	Jan. 3.....	17.07½	.0586
Nov. 30.....	9.75½	.1025	June 26.....	12.03	.0831			
Dec. 6.....	10.78	.0927	June 30.....	12.15	.0823			
Dec. 19.....	11.18	.0894	July 20.....	12.23½	.0817			

Defendant's Exhibit C. 1603

Included in the record are copies of printed tariffs from which the charges for the transportation of the shipments involved in this proceeding were determined. Appearing upon each is the notation:

Important notice.—For shipments accepted with freight payable at destination, the rates of this tariff shall be converted into dollars on the fixed basis of five francs per dollar.

1604

Evidence is presented on behalf of the French Line to the effect that, owing to the stringent financial situation prevailing in France during the period covered by the complaint, the carrier found it desirable to obtain possession of freight money in France at the earliest possible date, and in order to induce prepayment of charges it was found expedient to adopt the method of conversion of rates indicated in the above-quoted tariff provision. In this connection no evidence is of record tending to show why the respondent did not resort to the fundamental right inherent in it as a common carrier to demand and receive payment of freight charges as a condition precedent to transportation.

1605

Stress is laid by the carrier upon the contention that the complainant had equal opportunity with other shippers of cigarette papers to avail itself of the lower charges accorded prepaid shipments, and that as it elected to pay for the service rendered, upon delivery at destination it is precluded from alleging unjust discrimination under the statute. Knowledge of the lower charges to be had by prepayment is denied on

1606 *Defendant's Exhibit C.*

behalf of the complainant, and the evidence as a whole on this point is conflicting.

Section 16 of the Federal shipping act declares it unlawful for any common carrier within the purview thereof, directly or indirectly, "to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." By section 17 of that act it is provided "That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers." The manifest purpose of these provisions is to require common carriers subject to the statute to accord like treatment to all shippers who apply for and receive the same service; in view of which purpose if the tariff condition subjected the complainant to undue discrimination, his knowledge or lack of knowledge of such condition is plainly immaterial. In order to determine whether the complainant in the instant case was in fact subjected to undue and unreasonable prejudice and disadvantage and paid unjustly discriminatory charges for transportation, as alleged, it is pertinent, therefore, under the provisions of the statute above quoted, to consider whether the service furnished the complainant differed from that furnished shippers of cigarette paper who prepaid their freight and who were accorded lower charges.

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1608

Defendant's Exhibit C.

1609

The evidence of record indicates that, from a transportation standpoint, the shipments of the complainant were similar in every respect to those of shippers of cigarette paper who prepaid their freight. In so far as their actual physical handling and transportation were concerned, the record is conclusive that the service rendered by the respondent in connection with the consignments of each class of shippers was in every particular identical. It follows that unless conditions incident to the handling and transportation of the complainant's collect shipments existed which warranted the higher charges exacted, discrimination within the contemplation of the statute is established. Conversely, such conditions, to justify the higher charges, must have resulted in some detriment to the carrier comparable in degree to the amount of such higher charges.

1610

In this relation contention is made on behalf of the French Line that the higher charges paid by the complainant were justified because the service rendered in connection with its collect shipments was of a more expensive character than that rendered shippers of cigarette paper who prepaid their freight. In support thereof it is shown that it was necessary for the respondent to insure the freight on collect shipments or to assume the risk of loss in the event of disaster at sea, as well as to absorb the cost of cabling the freight money collected at destination to France. On the other hand, it is shown by the complainant that the marine insurance rate was but 25 cents per $100 on paper in bulk and 75 cents per $100 on paper in books, and that war-

1611

risk insurance averaged 7.2 cents per $100 during the period covered by the complaint. The exact cost of cabling does not appear of record. As a whole, the evidence clearly indicates that the difference in the charges exacted from the complainant and from shippers who prepaid their freight greatly and unduly exceeded the total amount of the carrier's additional expenditures resulting from its transportation of the complainant's shipments freight collect. As these in-
1613 cidents of the transportation service in connection with the complainant's collect shipments resulted in added expense to the carrier, however, the cost thereof might properly be reflected in a higher charge than for prepaid shipments.

From a consideration of all the facts and evidence of record, the board concludes and decides that, under the circumstances of this case, the charges collected from complainant were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections
1614 16 and 17 of the shipping act, to the extent that they exceeded the prepaid charges on like shipments from and to the same ports, plus such additional costs as the respondent was compelled to absorb over and above those accruing in connection with prepaid shipments. The record does not afford a basis for finding the extent, if any, to which the complainant has been injured, and the case will be assigned for further hearing in respect to any such injury and the amount of reparation to which the complainant may be entitled.

Defendant's Exhibit C. 1615

DOCKET No. 13.

AMERICAN TOBACCO COMPANY,

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE).

Submitted September 30, 1925. Decided December 29, 1925.

1616

Upon further hearing reparation awarded on shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York on account of injury due to unjustly discriminatory charges. Original report, 1 U. S. S. B. 53.

JUNIUS PARKER, CLINTON ROBB, and JNO. H. HOLMES for complainant.

JOS. P. NOLAN for respondent.

1617

SUPPLEMENTAL REPORT OF THE BOARD.

Exceptions filed by the parties to the proposed report in this case have been carefully considered.

This proceeding involves collect shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York, moved during the period April 7, 1919, to January 3, 1921, and consigned to the complainant American Tobacco Company. In connection

1618 *Defendant's Exhibit C.*

with these shipments the respondent French Line exacted charges for loading and carriage calculated upon a fixed basis of 5 francs to $1, while in regard to prepaid shipments of identical commodities carried for other of its patrons from Havre and Bordeaux to New York during the same period and in many instances upon the same vessel, the respondent accepted payment of such transportation charges in francs at the current rates of exchange ranging from 5.88 to 17.07½ francs to $1.

1619 Under authority of section 22 of the shipping act, sworn complaint alleging violations of that statute by the carrier in connection with the higher charges thus exacted was filed by the American Tobacco Company, and hearing was duly conducted by the board in accordance with its rules of practice. In its report in this case, rendered on July 17, 1923 (1 U. S. S. B. 53), the board decided from the evidence submitted by the parties at such hearing that the charges complained of were unduly prejudicial, unduly preferential, and unjustly discriminatory, in violation of sections 16 and 17 of the shipping act, to the extent which they exceeded prepaid charges on like shipments from and to the same ports and additional incidental costs, if any, which the carrier was compelled to absorb by reason of transporting collect. In regard to reparation contended for, however, it was decided that the record did not afford a basis for determining the extent, if any, to which the complainant had been injured, and the case was assigned for further hearing in respect to any such injury sustained and the amount of reparation to which

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the complainant might be entitled by reason thereof. Following extensions of time granted at the request of the parties, supplemental hearing was accordingly conducted on May 12, 1925, and the present report and decision are confined to a consideration of the issues whether in fact the complainant was injured within the meaning of section 22 of the shipping act by the payment of the charges found to have been unlawful, and, if injured, the pecuniary amount to which it is entitled as an award of reparation.

1622

Much of the testimony of the complainant's witnesses examined at the supplemental hearing was addressed in detail to the several kinds of cigarette papers in books purchased and sold during 1919, 1920, and 1921 by the complainant and other tobacco companies with which it competed, and to the various brands of cigarettes in the manufacture of which the cigarette paper in bobbins was used. The facts of record as provided by the evidence of these witnesses are that during this period all of such cigarette papers in books were imported from France, and,

1623

with the exception of some Italian and Japanese paper imported by one of the companies, all paper in bobbins used in the manufacture of cigarettes by both the complainant and such other tobacco companies likewise came from France and was purchased direct or through New York representatives of French manufacturers. Each of the companies (American Tobacco Company, Liggett & Myers Tobacco Company, R. J. Reynolds Tobacco Company, Pierre Lorillard Company, Surbrug Company, and others) had upon the same market its particular cigarette papers

1624 or cigarettes which corresponded in general character and quality to respective papers and cigarettes of the other companies. While for short intervals the price of one brand or another was higher or lower than a corresponding brand or another company, it is shown that throughout 1919, 1920, and 1921 the prices obtained by the several companies for their respective products here involved were practically the same. Considerable evidence is of record evincing that at
1625 no time was the complainant able to recoup any part of the greater charges paid by it by increasing the prices of its papers or cigarettes.

Testimony was also presented on behalf of the complainant regarding cost of production, method of computing cost items, and other matters having bearing or conceived to have pertinence in a decision of the issues involved.

Although the respondent was represented at the supplemental hearing by counsel, who cross examined the complainant's witnesses at length, no witnesses were presented or testimony offered
1626 on its behalf, and nothing was advanced by it tending to show the fact or amount of any additional cost incident to the carriage of the complainant's shipments collect rather than prepaid.

Conclusions and Decision.

Upon all the facts in this case it is undeniable that the complainant suffered injury within the meaning of section 22 of the statute by reason of the unlawful charges paid. As upon the record the injury thus sustained is fairly comparable to the difference between the transportation

1627

charges exacted of the complainant and what they would have been had its shipments been accorded charges based on the current rates of exchange similarly as were those of its competitors, together with interest, that difference and interest constitute the sum to which the complainant is entitled as an award of reparation. The principal of this sum is properly to be calculated upon the basis of the rate of exchange on the dates of the complainant's bills of lading, rather than, as contended by the complainant throughout the proceeding, upon the dates on which the charges were approved by it for payment. As in connection with each of the complainant's shipments the interim between the bill of lading date and the date payment of the charges was approved was one of decrease in the rate of exchange, the principal amount of reparation to which the complainant is entitled is less than the $53,840 prayed for.

1628

FINDINGS.

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From a consideration of all the facts, circumstances, and conditions of record the board finds that during the period April 7, 1919, to January 3, 1921, the complainant American Tobacco Company made 279 shipments of cigarette papers in books and cigarette paper in bobbins, as set forth and described in exhibits of record in this proceeding, on which it paid and bore transportation charges in the sum of $99,755.47; that said charges on said shipments were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory be-

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tween shippers, in violation of sections 16 and 17 of the shipping act, as decided by the original report of the board herein, to the extent which they exceeded $51,898.49; that said complainant has been injured by the respondent Compagnie Generale Transatlantique within the meaning of section 22 of that statute in the sum of $47,856.98 and interest thereon at the rate of 6 per cent. per annum from the respective dates of payment of the transportation charges involved as specified

1631 in column 24 of complainant's amended Exhibit A, and that the complainant American Tobacco Company is entitled to an award of reparation in the amount of said sum and interest.

An order will be entered accordingly.

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 29th day of December, 1925.

1632

Formal Complaint Docket No. 13

American Tobacco Company *v.* Compagnie Generale Transatlantique (French Line)

Whereas on July 17, 1923, the board entered its report in the above-styled proceeding, among other things assigning for further hearing the issues as to the fact of injury sustained by complainant and the amount of reparation, if any, to which complainant might be entitled by reason of any such injury; and

Defendant's Exhibit C.

It appearing that such further hearing and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed its report thereon containing its conclusions, decision, and findings of fact, which said report is hereby referred to and made a part hereof;

1633

It is Ordered, That the respondent Compagnie Generale Transatlantique pay unto the complainant American Tobacco Company on or before ninety days from date hereof, as reparation on account of unlawful transportation charges exacted, the sum of $47,856.98 with interest thereon at the rate of six per cent. per annum computed from the respective dates of payment by complainant of said charges as specified in column numbered 24 of amended Exhibit A of record herein.

1634

By the board.

(Sgd.) Roy H. Morrill,
Secretary.

1635

A true copy.

Roy H. Morrill,
Secretary.

[seal]

Translation.

546

1st of February 1917

Compagnie Générale Transatlantique

Tariff of freight.

Subject to change without notice

From Havre to New York.

Net rates without primage

Steel and iron bars (profiled	1000 K	40 fr.	Logwood (rough up to 2000 K	per 1000 K	40 fr.
Household articles	"	-	Hosiery (of wool and cotton, or		
(aluminium, cast iron	"	-	of silk)	cub. meter	80 fr.
" tin)	cubic meter	35 fr.	Empty bottles (in bags)	per 1000 K	40 fr.
Paris articles	- D.	80 fr.	Buttons (all sorts)	cub. met.	60 fr.
Household articles (copper &			Braces	- D. -	55 fr.
nickel - - - - - - - -	cubic meter	60	Bronzes (imitations and for		
Religious articles (wood or metal	- D. -	60	lighting purposes	cub. met.	45 fr.
Asphaltium (packed)	1000 K	40	Brush made articles	D	45 fr.
Automobiles	cub. meter	60	Bulbs and onions of flowers	D	60 fr.
Shades	D	40	Salted guts (in casks)	per 1000 K	70
Acetate of cellular	per 1000 K	100	Embroidery	cub. met.	80
			Caned baskets	D	30 fr.
Toys	cub. meter	60	Cacao	per 1000 K	60 fr.
Biscuits	D	50	Coffee	D	60 fr.
Dyeing sticks	D	30	Rubber (Raw)	D	120 fr.
Ultramarine blue	per 1000 K	60	- D. - (wrought)	cub. met.	60 fr.
Wooden bucketware and			Caps (for bottles)	per 1000 K	60 fr.
turner's articles	per cub. met.	45	Cardboard works	cub. met.	40 fr.

Ask

Wrought Celluloid	cub. met	60 ft
Straw hats (not trimmed)	"	40 ft
Hatmaking (work)	"	60 ft
Marble chimneys	per 1000 k or cub. met	60 t
Rags (in bales pressed (paperstock)	per 1000 k	30 t
Chocolate	"	60
Cement	"	30 t
Blacking	"	50 t
Glue (in casks or bales	per 1000 k	60
Clothing.	cub. met	80 t
Jam	per 1000 k	60
Preserved fruit	cub. met	60
Preserved or canned goods	per 1000 k	55 t
" goods under glass)	"	60
Old junk (in coils)	"	30
" in bales (paperstock)	"	40
Paints (common, sulfur made	"	60
Paints (indigo, aniline and alizarine	"	60 t
Colours (extracts for dyeing purposes.	"	60 t
Billiard chalk	"	60
Tooth picks	cub. met	40 t
Bee-wax	"	60 t
Coal for incense in cases)	"	30 t
Camphor (in cases)	"	80
Metallic carders,	"	60

Funeral wreaths	cub. met	30 ft
Cutlery	"	80 t
Crystal glass	"	45 t
Leathers (prepared)	"	80 t
" (salted green in pack	per 1000 k	60 t
" (rough dry in bales	"	70 t
Waste of paste in rolls	"	30 t
" of peltry (pressed in bales	"	100 t
" of raw hides (for hat making)	"	60
Waste of hides (Glue stock	"	45 t
" of rubber (refuse pneumatics or other kind)	"	55
Waste of grease	"	40 t
Lace	cub. met	80 t
Dice (playing)	"	60
Drugs (in bales or casks	"	60
" (in cases)	cub. m or 1000 k	80
Down (pressed in bales)	per 1000 k	120
Waste of silk (schappe or fleuret)	cub. met	60
Mineral waters.	per 1000 k	45 t
Enamel	cub. met	35 t
Ink (in casks)	per 1000 k	40
.....	"	40 t
Paper fans	cub. met	40
Extracts for dyeing purposes	per 1000 k	60
" for tanning purpos.	"	60 t

A-2

ockery ware	cub. met.	45+
Hair nets	℘	80
ilms (cinematographic)	℘	80
rtificial flowers	℘	40
ast iron (moulded) raw		
ieces of foundry)	1000k or c.m	40+
urs and peltry	cub. met	60
heese (dry and half dry)	per 1000k	60
lock-work supplies	cub. met	80
Sea pebbles (in bags)	per 1000k	13+
Gloves and material)	cub. met	80
elatine (in boxes)	per 1000k	80
℘ in casks or bales	℘	60
Gum of benzoin	cub. m	80
Seeds in bags or casks	per 1000k	50
Grain " "	℘	50+
Graphite (in bags	℘	60
Hops (like flowers, herbs		
and dry leaves	per 1000	90
Herbs, flowers, dry leaves		
(in bales	per 1000k	90
Herbs (weighing less than		
200k for one cuber (meter	℘	20
Woollen puffs	℘	60
Common clockwork (wood		
and metal (common clocks	cub. met	45+
Clock work (delicate)	℘	80+
Material oil: boxes or drums	c.m or 1000k	80+

Edible oil (in casks)	per 1000k	55+
" " (in cases)	"	60+
Musical instruments	c. met	60
Instruments of precision	℘	80
Toys	c. met	40+
Fruit juice	per 1000k	60
Condensed milk	per 1000k	60
Book-work	c. met	80
Linen-drapery	℘	80
Liquors (Liquids) and alcoholic beverages		
in cases "	per 1000k	50+
in casks	℘	60+
Wines (except champagne (in cases	℘	80
" " in casks	℘	60
Wines (champagne in Bottles		
per 250 Bottles		60
Engines and pieces of		
mechanism. upto 2000k	c.m. or 1000k	60+
Machinery and pieces of me-		
chanism from 2001k to 5000k	℘	75+
Marble in pieces for mosaic, bags	per 1000k	30
Wrought marble	c. meter	60
Delicate goods (not denominated	c. m, or 1000k	80+
Morocco-leatherwork	c. met.	80+

A-3

Material for artists	c. met.	60+
Piano mechanics.	℔	60
Haberdashery	℔	80
Quick. Silver packed in pots	per 1000 K	200 L
Furniture (ancient) old stores	c. met	100+
" commercial	"	80
Grindstones and millstones		
Grindstones for milling	c. met	40
Second hand furniture.		
moving - objects (except articles of art.) in boxes or framed	cub. met.	50
Articles of fashion	℔	80
Mother of pearl (raw)	per 1000 K	60
Bone black (in casks	"	50+
Bone Black (in bags	"	45+
Fancy articles	c. met.	80
Articles of art and for collections	c. met.	100
Ochre (in casks)	per 1000 K	35 L
Optics	c. met.	80+
Church ornaments	c. met	60
Crushed bones	per. 1000 K	40
Wicker (raw)	per 1000 K	80
Tools (hardware)	c.m. or 1000 K	60
Oxalate of sodium	per 1000 K	50
Perfumery (including artificial perfumes from Switzerland.	c. met.	80

Trimming	c. met.	80
Raw hides (dry, in bales	per 1000 K	70
Hides (prepared)	c. met.	80
Plants (living)	℔	40
Plaster (in bags	per 1000 K	30
Phonographs (and parts)	c. met.	60
Stationery	℔	80
Cigarette paper	per 1000 K	80
Writing paper (in cases	"	80
Straining paper	"	60
Wrapping and printing paper (in bales or rolls	per 1000 K	60
Wrapping and printing paper (in cases)	per 1000 K	70
Peltry	cub. met.	80
Ordinary clocks	℔	45
Stones and marbles	" "	
(blocs of up to 2000 K	per 1000 K	30
Stones and marbles blocs of 2000 K to 10,000 K hoisting included	per 1000 K	45
Photographic plates	c. met.	80
Wooden pipes.	℔	80
Unwrought feathers (for attire)	℔	60
Dressed feathers (for attire)	℔	40
Hair and waste of hair (in bags or bales)	per 1000 K	100
Pepper (in bags	℔	60

Porcelain	cub. met	45
Porcelain of Limoges, origin to be justified)	per 1000 k	145
Milk (in powder)	q	60
Pharmaceutic produce	1000 k or c. met.	80
Prussiate of potash	per 1000 k	60
Gummed paper (transparent	q	80
Metallic pens	c. met	60
Billiard processes	q	60
Hardware and locksmith-ware	c.m. or per 1000 k	60
Ribbons.	c. m.	80
Sand in casks	per 1000 k	20
Sardines and fish in oil	q	55
Artificial silk (schappe)	c. met.	60
Silk goods and raw silk.	q	80
Bristles of hogs	q	60
Slag (of gold in bags. (Lucette	per 1000 k	20
Ordinary Soap (in cases	c. met.	60
Metallic soldering.	per 1000 k	60
Statues (in plaster or imitation stone cardboard)	c. met.	40
Statues (in terra cotta)	q	40
Tobacco	c. met.	60
Ordinary foot rugs (in bales)	"	40
Straw tressed, hemp tressed and wooden matweed	per c. met	40
Sundry tissues	q	80
Press-point	q	80
Tapestry	q	100
Basketwork (packed)	c. met	20
Varec (pressed in bales)	per 1000 k	60
Varnish (thick in flasks)	c. met.	60
Glass. (in sticks)	per 1000 k	60
Glass work	"	45 t
Watch glasses.	c. met	80 t

With a minimum of 30 francs.

*Remark: All these quotations are made (from the ship's side) they allow shipping tax of 1 t 50 per ton (weight or measurement), as in use

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Concerning shipments accepted as freight to be collected at destination, rates on present tariff are to be converted in dollars on a basis ~~agreed~~ fixed upon of five francs for a dollar.

Translation

1st of July 1919

Compagnie Générale Transatlantique

Tariff of fr. gld

Subject to change without notice

From Havre to New York

Net rates without primage

		Par mail boats	Par cargoes			Par mail steamers	Par cargo boats
Shades	c.m.	60	40	Automobiles (up to 2000k	c.m	60	60
Acetate of copper	1000k	80	50	Dyeing sticks	"		30
Arsenical acid	"		50	copper waste	1000k		50t
Steel (in bags)	"		60	Bicarborate of Sodium	1000k		80
Airplanes	c.m.	60	60	Imitation Jewelry	c.m.	80	80
Albumen	1000k		80	Toys	c.m.	80	80
Raw aluminium	"		50	Biscuits	"	60	50
Electric bulbs	c.m.	60	60	White lead	1000k		100
Antimony	1000k		50	Ultramarine blue	1000k		70
Household articles	"			Log wood (rough up to 2000k)	1000k		50
Aluminium, cast iron	"			Wood for canes (in bags	"		
and tin	c.m.	60	35	or packages)	1000k		50
Household articles (of	"			Wooden bucketware and			
copper and nickel	c.m	60	60	turner's articles	c.m.	60	45
Bone articles	"	60	60	Empty boxes	c.m	60	40
Paris articles	"	80	80	Hosiery	c.m	80	80
Religious articles	"	60	60	Cork stoppers (in bales)	1000k		120
Asphaltum (packed	1000k		40	Empty bottles (in boxes) or casks	1000k		45

B-1

		mail boats	Cargoes
Empty bottles (in bags.	1000 K	—	40
Buttons (all sorts)	c.m	60	60
Salted guts (in casks)	1000 K	90	70
Braces	c.m.	80	70
Old stores and objects of collections	c.m. or ad valorem	100	100
Embroideries	"	80	80
Artistic bronzes	" or ad valorem	100	100
Bronzes (imitations or for lighting purposes)	c.m.	60	45
Brush made articles	c.m.	60	60
Bulbs and onions of flowers	c.m	60	60
Caned baskets	c.m.		30
Camphor (on deck)	c.m.	80	80
Raw Rubber	1000 K	160	120
Rubber (wrought)	c.m.	60	60
Caps (for bottles)	1000 K	100	80
Carbonate of potash in casks	1000 K		35
Postal cards (illuminated)	c.m.	80	80
Cardboard works (empty	c.m	60	40
Caseine	1000 K		60
Wrought celluloid	c.m.	60	60
Kernel of walnuts (in boxes)	1000 K	120	90
Cornices (straw)	c.m.	60	40
Dry mushrooms	1000 K		75
Raw hemp (in bales pressed	1000 K		60
Straw hats (not trimmed and straw in braids)	c.m.	40	40

		mail boats	Cargoes
Hat making (work)	c.m.	60	60
Electric carbons	c.m.	60	60
Thistles	c.m		25
Chestnut (all kinds)	1000 K	90	70
Shoes and boots	1000 K	80	80
Marble mantelpieces	1000 K or c.m.	60	60
Hair	c.m. ad valorem	100	100
Rags and old packings (pressed in bales) paper	1000 K		30
Chloride of potash. (in bags)	— 1000 K		30
Chocolate	1000 K	80	80
Chromos	c.m.	80	80
Currant	1000 K		30
Blacking	c.m.	60	50
Glue	1000 K	100	60
Clothing	c.m.	80	80
Jam	c.m	60	60
Preserved fruits	c.m -	60	60 1000
Preserved goods (tin cans	"	60	55 1000
Preserved goods (glass)	"	60	60 1000
Shells of fish	"	60	70 100
Old junk (in coils)	1000 K		40
Colours (for artists	c.m.	60	60
Ordinary colours and extracts for dyeing.	1000 K		60
Funeral wreaths	c.m	60	40

		mail Steam		Cargo boats
Cutlery	c.m	80	c.m.	80
Blankets (common in bales pressed)	c.m.	60	c.m	60
Billiard chalk	c.m	60	1000k	60
Cream of tartar	—	—	1000k	80
Crucibles	—	—	c.m.	45
Vegetable hair	—	—	1000k	80
Hair of mane (imitation)	c.m	60	1000k	60
Wrought leather	c.m.	80	c.m.	80
Crystal glass.	c.m	60	c.m.	45
Salted hides (package)	1000k	70	1000.	60
Dried hides (raw) in bales	1000k	85	1000k	70
Copper work ..	c.m	60	c.m	60
Waste of bones fertilizer	—	—	1000	40
Waste of leather (buff cleats)	—	—	1000	40
Waste of cotton thread (from spinning manufactory)	—	—	1000k	40
Waste of pulp (for rollers)	—	—	1000	30
Waste of skins (Glue stock)	—	—	1000k	45
Waste of raw rabbit skins for hat work.	—	—	1000	60
Waste of pelts (pressed in bales)	—	—	1000k	100
Waste of spinned silk (schappe)	c.m	80	c.m.	80
Waste of old rubber.	—	—	1000k	55
Waste of grease.	—	—	1000	40
Lace	c.m. or ad valorem	80	c.m	80
Drugs (in boxes)	c.m. or per 1000k	80	c.m.	80
Drugs (in bales or casks)	c.m	60	c.m	60

		mail Steam	C	Cargo boats
Mineral waters (in cases	—	—	1000k	60
Worn clothes	c.m.	80	c.m.	80
Enamel (raw in casks.)	—	—	1000	60
Enamelwork	c.m.	60	c.m.	35
Emery (raw, in casks.)	—	—	1000k	50
Ink (in casks)	—	—	1000k	50
Fertilizers	—	—	1000k	40
Wrappers or metallic nets for bottles	—	—	1000	60
Metallic labels	—	—	1000k	60
Printed or lithogra. shed labels	c.m.	60	c.m	60
Paper fans	c.m	60	c.m	45
Extract of Sorrel	—	—	1000	60
Extracts for dyeing purposes and tanning purposes	—	—	1000	60
Crockeryware	c.m.	60	c.m.	45
Hair nets	c.m	100	c.m	100
Cotton nets	c.m.	80	c.m.	80
Cinematographic films	c.m.	80	c.m	80
Threads of all sorts	c.m.	80	c.m.	80
Artificial flowers	c.m	40	c.m	40
Flowers of sugar	c.m	60	c.m	60
Cast iron (raw pieces from foundries.	—	— or per 1000k	c.m	40
Supplies for clockwork.	c.m	80	c.m	80

B-3

		Per mail Boats		Per cargoes
Photographic supplies	c.m	80	c.m.	80 tq
Weaving supplies	c.m	60	c.m.	60 "
Furs and peltries	c.m	150	c.m.	150 "
Cheese (fresh)	c.m	60	c.m	60 "
" - Roquefort	c.m.	60	1000 K	100 "
" in vats	1000 K	100	1000 K	100 "
Fruit (dry and preserved)	c.m	60	c.m.	60
Sea pebbles (in bags			1000	13
Glove making articles	c.m.	80	c.m.	80
Gelatin (in cases)	1000 K	130 t	1000 K	80
Gelatin (in casks)	1000 K	100 t	1000 K	80
Mirrors (framed)	c.m	80	c.m	80
Glycerine (drums)	—	—	1000 K	40
Seeds (culinary) in boxes	c.m	80	c.m.	80
Seeds (in bags or casks)	—	—	1000 K	75
Grease bags or casks	—	—	1000 K	50
Graphite (ore)	—	—	1000 K	60
Engravings	c.m	100	c.m	100
Herbs (flowers and dry leaves (in bales)	1000 K	120	1000 K	90 t
Clockworks (common in wood and metal)	c.m	60	c.m.	50
Clockworks (delicate)	"	100	c.m	100 t
Cuffs (woolen)	c.m.	60	c.m	60
Edible oil (in cases)	—	—	1000 K	80
Edible oil (in casks)	—	—	1000 K	60

		Per mail boats		Per cargoes
Arachide oil, and Lin-seed oil (in casks)	—	—	1000 K	50
Material oils in cases	c.m.	80	c.m.	80
or per 1000 K or ad valorem				
Material oils (in drums)	1000 K	100	1000 K	100
or ad valorem				
Musical instruments	c.m	60	c.m.	60
Instruments of precision	c.m	80	c.m	80
Toys	c.m	60	c.m	40
Fruits (juice of)	c.m	60	1/00 K	60
Condensed milk	—	—	1000 K	60
Dry vegetables (in bags	—	—	1000 K	75
Lens (raw glass outlined	—	—	1000 K	60
Book-selling (articles)	c.m.	80	c.m	80
Lithography	c.m	80	c.m	80
Cork wood raw, planks (in bales)	—	—	1000 K	70
Flax (tilled, in bales)	—	—	1000 K	60
Laundry	c.m.	80	c.m	80
Liquids.				
Liquors and alcoholic beverages (cases)	1000 K	120	1000 K	90 t
" " in casks	1000 K	100	1000	60
Wines in cases (except- ing champagne	1000 t	120	1000 K	80
Wines, in casks (except- ing Champagnes	1000 t	100	1000	60 t
Champagne wines (in bottles	per 250 Bs	80	250 Bs	60
Vinegar (in cases	1000 K	120	1000 K	80

		Per mail Boat		Per cargo			Per mail boats		Cargoes
		—		—			—		—
Vinegar (in casks)	1000 K	100 t	1000 t	60	Muriate of potash (bags)	—	—	1000 K	30
Spectacle work)	c.m	80	c.m	80	Mother of pearl (raw	c.m	60	1000 K	70
Engines (and mechanics	—	—			Bone black (in casks)	—	—	1000 K	50
(up to 2000 K)	—	—	1000 K	60	Bone black (in bags)	—	—	1000 K	45
Engines and mechanics	—	—			Fancy articles	c.m	80	c.m	80
from 2001 to 5.000 K	—	—	1000 K	75	Articles of art and for				
Empty wooden trunks	c.m.	60	c.m	30 t	collections.	c.m	100 or ad valorem	c.m	100
Empty leather trunks	c.m	60	c.m	35	Dry nuts (in bales)	1000 K	160	1000 K	100
Wicks for incandescent work	c.m	60	c.m.	60	Ochre and earth for	—	—	-	-
Marble in pieces for mosaic (in bags)	—	—	1000 K	30	colours (in casks)	c.m.	60	c.m	60
Marble (for artistic work)	c.m	100	c.m	100	Flower bulbs	c.m.	60	c.m.	60
Wrought marble	c.m.	60	c.m	60	Oleo-stearine	—	—	1000 K	50
Morocco-leatherwork	c.m	80	c.m	80	Optics	c.m	80	c.m.	80
Material for artists	c.m	60	c.m	60	Church ornaments.	c.m.	60	c.m.	60
Copper marbles	—	—	1000	50	Wicker (in packages	—	—	1000	100
Piano mechanics	c.m	60	c.m	60	Crushed bones (in bags	—	—	1000 K	50
Haberdashery	c.m	80	c.m.	80	Tools (hardware)	1000 K or per	60	1000 K cubic	60 metre
Furniture (ancient and					Straw covers for bottles				
old stores)	c.m	100 or ad valorem	c.m	100	(in bales, pressed)	—	—	1000 K	80
Industrial furniture	c.m	80	c.m	80	Stationery	c.m	60	c.m	80
Grindstones and millstones	—	—	1000 K	40	Cigaret paper	c.m	60	1000 K	80
Second hand furniture					Writing paper	c.m.	60	1000 K	80
(framed or in cases)	c.m.	60	c.m.	60	Drawing paper	c.m	60	1000 K	80
Articles of fashion	c.m	80	c.m	80	Straining paper	c.m	60	c.m	60
Watches (or watch move					Wrapping and printing	—	—		
ments	c.m	100 or ad valorem	c.m	100	paper (bales and rolls	c.m	60	c.m	60
					Tapestry paper in cases	c.m	60	c.m	60

B-5

		Per mail boat		Per cargo
Tapestry papers (in bales)	c.m	60	c.m	45
Reel paper	c.m	60	1000 k	60
Perfumery	c.m	80	c.m	80
Trimming	c.m	80	c.m	80
Feeding frastes	–	–	1000 k	80
Pate de foie gras.	c.m	60	c.m	45 L
Hides raw and dry, in bales	1000 k	80	1000 k	70
Hides (prepared)	c.m	80	c.m	80
Combs	c.m	60	c.m.	60
Peltries	c.m.	per 150	c.m	150
Photographic pellicls	c.m	80	c.m	80
Glass beads	c.m	60	c.m.	60
Phonographs and parts	c.m	60	c.m	60
Cut Stone (finished off				
Less than 1000 k	–	–	1000 k	50
Lava Stone (volvic)	–	–		
(free on board)	–	–	c.m.	45
Stones and marble	–	–		
blocs (upto 2000 k)	–	–	1000 k	45
Stones and marble	–	–		
blocs from 2001 k to 10000 k	–	–		
hoisting included	–	–	1000 k	60
Wooden pipes	c.m.	60	c.m.	60
Plants (alive)	c.m	60	c.m	50
Photo. plates	c.m	80	c.m.	80
Plaster (in bags)	–	–	1000 k	30

		Per mail boat		Per cargo
Unwrought feathers for attire	c.m.	60	c.m	60
Dressed feathers for attire	–	–	–	–
	c.m.	40	c.m.	40
Hair, waste of hair and hair waddling (in bales)	c.m.	45	1000 k	100 k
Hair, waste of hair and hairwadding (in cases)	c.m.	45	c.m.	30
Porcelain	c.m.	60	c.m.	45 L
Porcelain of Limoges (origin to be justified)	–	–	1000 k	145 L
Potash (from Alsace in casks)	–	–	1000 k	35 L
Potash (from Alsace, in bags)	–	–	1000 k	30
Milk (in powder)	–	–	1000 k	60
Billiard pieces	c.m.	60	c.m	60
Pharmaceutic produce	1000 k or per c.m.	80	1000 or per c.m.	80
Prussiate of potash	–	–	1000	60
Clocks (common)	c.m.	60	c.m	50
Hardware and lock smithware	1000 k or per c.m.	60	1000 k	60
Root of gentian	1000 k	90	1000 k	60
Root of liquorice	1000 k	90	1000 k	60
Settlings of copper	–	–	1000 k	50
Red of antimony	c.m.	60	1000 k	100
Ribbons.	c.m.	80	c.m.	80
Sand for mouldingwork	–	–	1000 k	30

B-6

	Per mail boats		Per cargo	
Sand for glass making	—	—	1000 k	20
Sand for lithography	—	—		
in cases.	—	—	1000 k or per c.m.	40
Crocus or saffron.	c.m.	80	c.m	80
Sardines and fish in oil	c.m.	60	c.m	55 t
Soap. ordinary, other than				
for perfumery (in cases)	—	—	1000 k	40
Sawdust	1000 k	80	1000	60
Slag (of gold, in bags	—	—	1000 k	30
Saddlery and harness	c.m	80	c.m	80
Artificial silk	c.m	80	c.m	80
Bristles of hogs.	c.m	80	c.m.	80
Silk goods and raw silk	c.m	80	c.m	80
Metallic soldering.	—	—	1000 k	60
Statues (plaster, imitation	—	—		
Stone carboard and Terra	—	—		
cota.	c.m	80	c.m	50
Pictures	c.m	100 or ad valorem	c.m.	100
Ordinary foot rugs (in bales)	c.m	60	c.m	40
Tapestry	c.m	100	c.m	100
Buff. cleats	—	—	1000 k	40
Crude tartar	—	—	1000 k	45
Potters earth (fire proof)	—	—	1000	30
Tissues (all sorts)	c.m	80	c.m.	80
Metallic cloth	c.m	60	c.m	60

	Per mail Boats		Per cargo	
Straw tressed and straw				
hats not trimmed	c.m	40	c.m	40 t
Press print	c.m	80	c.m	80
Vanilla	1000 k	150 or ad valorem	1000 k	150
Basket material (in bales)	c.m	30	l.m.	20
Varec (pressed in bales)	—	—	1000	60 t
Velvet	c.m	80	c.m.	80
Verditer (or vert de gris)	c.m	80	c.m.	50
Varnish. (thick.)	c.m.	60	c.m.	60
Watch glasses.	c.m	80	c.m.	80
Glass works	c.m	60 or per 1000 k	c.m	45
Minimum of freight	30 francs			
Shipping tax 6 t 25 per taxation	minimum		1 t	
Labor tax 0 t 05 cent. per	1000 k	minimum	0 t 10 c	
Articles for which no rates by mail boats are provided can be accepted on same boats at same rates as on cargo-boats, if latter not available and provided available space.				

Valuables.

Jewels, clock. work and valuable objects.	3/5	%	minimum	55 f
Diamonds, precious stones, pearls &c to				87

one hundred thousand francs	1/2 per cent	minimum 30 fcs
Diamonds, precious stones, pearls, above 100.000 francs.	1/6 of 1 per cent	minimum 500 fr
Bonds, titles, cash and precious metals up to 50.000 fr	1/2 per cent	minimum 30 fcs
" " " from 50.001 to 200.000 fr	1/3 per cent	minimum 250 fr
" " " from 200.001 fr to 300.000 fr	1/6 per cent	minimum 666 fcs
" " " from 500.001 f and over	0.64 of one per cent	minimum 830 fr

Shipping tax: 1 fr for each parcel.

Small parcels: Samples of a value not over 100 francs

up to	0.050 minimum (per unit)	12 -
up to	0.075 " "	15
and over	at the rate of.	3 per fraction of 0.025

Shipping tax 5 fr per cubic meter, minimum 1 fr for each receipt.

Remark. Exceptionnaly, samples shipped at same time as goods or freight, are accepted for 100 fr per cubic meter with a minimum of 10 fr.

Important notice Concerning shipments accepted as freight to be collected at destination, rates on present tariff are to be converted in dollars on a basis fixed of five francs for a dollar

B-8

Translation

16th June 1920

Compagnie Générale Transatlantique

Tariff of freight

Subject to change without notice

From Havre to New York

Net rates without primage

		Per mail boats	Per cargo			Per mail boats	Per cargo
Strades	c.m	90	60	Copper waste	1000k		75
Acetate of copper	1000k	110	60	Bicarbonate of sodium	1000k		120
Arsenical acid	1000k		75	Imitation Jewelry	c.m.	120	100
Steel (in bars)	1000k		90	Toys	c.m	120	100
Airplanes	c.m	100	80	Biscuits	c.m	90	75
Albumen	1000k		120	White lead	1000k		150
Raw aluminium	1000k		75	Ultramarine blue	1000k		105
Antimony	1000k		75	Log wood (rough upto 2000k	1000k		75
Household articles				Wood for canes (in bags	—	—	
of aluminium, cast iron				or packages)	1000k		75
and tin	c.m.	90	55	Wooden bucket ware and			
Household articles				turner's articles	c.m	90	70
(of copper and nickel	c.m	90	75	Empty boxes	c.m	90	60
Paris articles	c.m.	120	100	Music boxes	c.m.	90	75
Asphaltum (packed)	1000k		60	Hosiery	c.m.	120	100
Automobiles upto 2000k	c.m	100	80	Cork stoppers (in bales)	1000k		180
" 2001k to 3000k	c.m	120	100	Empty bottles in boxes or casks	1000k		70
Dyeing sticks	c.m		45	Empty bottles (in bags)	1000k		60

		Per mail boats	Per cargo
Buttons (all sorts)	c.m	100	80
Salted guts (in casks)	1000 K	–	100
Braces	c.m	120	100
Old stores and objects of Collections	c.m	150 or ad valorem	125
Embroideries	c.m	120	100
Artistic bronzes	c.m	150	125
Bronzes (imitations or for lighting purposes	c.m	100	70
Brush made articles	c.m	120	90
Bulbs and onions of flowers	c.m	90	75
Caned baskets	c.m		45 L
Camphor (on deck)	c.m	120	100
Raw Rubber	1000 K	240	180
Rubber (wrought)	c.m	100	80
Caps for bottles.	1000 K	150	120
Carbonate of potash in casks.	1000 K	÷	53
Postal cards (Illuminated	c.m	120	100
Card board works (empty	c.m	90	60
Caseine	1000 K		90
Wrought celluloid	c.m	100	80
Kernel of walnuts (in boxes	1000 K	180	135
Comfitures (straw	c.m	90	60
Dry mushrooms	c.m	90	110 / 1000 K
Raw hemp; in bales pressed	1000 K		90
Straw hats (not trimmed)	–	–	
and straw in braids.	c.m	60	50

		Per mail Boats	Per ca
Hat making (work)	c.m.	100	8
Electric carbons	c.m.	90	75
Thistles	c.m	–	4
Chestnut (all Kinds	1000 K	140	11
Shoes and boots	c.m	100	12
Marble chimneys	1000 K	100	80
Hair	c.m	150 or ad valorem	125 or per c. meter
Rags and old packing (	–	–	
pressed in bales (paperstock	1000 K		60
Chloride of potash (in bags	1000 K		30
Chocolate	1000 K	120	90
Chromos	c.m	120	100
Cement	1000 K	–	45
Blacking	c.m	90	75
Glue	1000 K	150	90
Clothing	c.m	120	100
Jam	c.m	90	80
Preserved fruits	c.m.	90	90 * / 1000 K
Preserved goods (tin cans	c.m	90	90 * / 1000
" " (glass)	B.m	90	90 * / 1000
Shells of fish	1000 K		120
Old junk (in coils	1000 K		60
Ordinary colours and extracts for dyeing	– / 1000 K		– / 90
Funeral wreaths	c.m	90	60
Cutlery	c.m	120	100

		Per mail Boats		Per cargoes
Blankets (common in bales pressed	c.m.	90	c.m	75
Billiard chalk	c.m	90	1000 K	90
Cream of tartar	–	–	1000	100
Crucibles	c.m.	–	–	70
Vegetable hair	–	–	1000 K	120
Hair of crane (imitation)	c.m	90	c.m	75
Crystal glass	c.m	90	c.m	70
Hides and skins (pre-				
pared other than peltry	c.m	120	c.m	100
Salted hides (packages)	1000 K	110 K	1000 K	90
Dried hides raw in bales	1000	130	1000	105
Copper works	c.m	90	c.m	75
Raw copper (in ingot)	–	–	1000 K	60
Waste of brass (fertilizer	–	–	1000 K	60
Waste of leather (buff cleat	–	–	1000 K	60
Waste of cotton thread	–	–		
from spinning manufactur	–	–	1000	60
Waste of pulp (for rollers)	–	–	1000	45
Waste of skins (glue stock	–	–	1000 K	70
Waste of raw rabbit skins	–	–		
for hat work	–	–	1000	90
Waste of peltry (pressed in bales	–	–	1000	150
Waste of spinned silk (schappe)	c.m	120	c.m	100
Waste of old rubber	–	–	1000 K	85
Waste of grease	–	–	1000	40
Lace	c.m	120	c.m	100
Drugs (in boxes	c.m.	120 or ad valorem or per 1000 K	c.m	100

		Per mail boats		Per cargo.
Drugs (in bales or casks	c.m	90	c.m	80
Mineral waters (cases	–	–	1000 K	60
Worn clothes	c.m.	120	c.m	100
Enamel (raw in casks)	–	–	1000 K	90
Enamelwork	c.m	90	c.m.	55
Emery (raw, in casks)	–	–	1000 K	75
Ink, in casks	–	–	1000 K	75
Fertilizer	–	–	1000 K	60
Wrappers, or metallic	–	–	–	
nets for bottles	–	–	1000 K	90
Metallic labels	–	–	1000	90
Printed or lithographed				
labels	c.m	90	c.m	75
Paper fans	c.m	90	c.m	70
Extract of sorrel	–	–	1000 K	90
Extracts for dyeing pur-	–	–		
poses and tanning purposes	–	–	1000 K	90
Crockeryware	c.m	90	c.m	70
Hair nets	c.m	150	c.m.	125
Cotton nets	c.m	120	c.m	100
Cinematographic films	c.m	120	c.m	100
Threads of all sorts	c.m.	120	c.m	100
Artificial flowers	c.m	60	c.m.	50
Cast iron (raw pieces				
from foundries	–	– per	c.m. 1000 K	60
Supplies for clock work	c.m.	120	c.m	100

C-3

		Per mail boats		Per cargo
Photographic supplies	c.m	120	c.m	100
Weaving supplies	c.m	90	c.m	75
Furs and pelteries	c.m	200	c.m	175
Cheese (fresh)	c.m	90	c.m	75
Cheese (Roquefort	c.m	90	1000k	150
Cheese in vats	1000k	150	1000k	150
Dry fruit and preserved fruit	c.m	90	c.m	80
Sea pebbles (in bags	—	—	1000k	20
Glove making articles	c.m	120	c.m	100
Gelatin (in cases	1000k	200	1000k	120
Gelatin (in casks	1000k	150	1000k	90
Mirrors framed	c.m	120	c.m	100
Glycerine (drums	—	—	1000k	60
Seeds (culinary, in cases	c.m	120	c.m	100
Seeds (in bags or casks	—	—	1000k	100
Grease (bags or casks	—	—	1000k	75
Graphite (ore)	—	—	1000	90
Engraving	c.m	150	c.m	125
Herbs, (flowers and dry leaves (in bales)	1000k	180	1000k	135
Herbs (flowers and dry leaves. in cases.	c.m	60	c.m	50
Clock work.	c.m or ad valorem.	150	c.m	125
Edible oil (in cases	—	—	1000k	120
Edible oil (in casks)	—	—	1000	90
Arachide oil and tin	—	—		
Seed oil in casks	—	—	1000k	75

		Per mail boats		Per cargo
Material oils (in cases	c.m or 1000k	120	c.m or ad valorem	100
Material oils (in drums	1000k	150	1000k	125
Musical instruments	c.m	90	c.m	75
Instruments of precision	c.m	120	c.m	100
Toys	c.m	90	c.m	60
Juice of fruits	c.m	90	1000k	90
Condensed milk	—	—	1000k	90
Dry vegetables (in bags	—	—	1000k	115
Lens (raw glass outlined	1000k	120	1000	90
Bookselling articles	c.m	120	c.m	100
Lithography	c.m	120	c.m	100
Cork wood (raw — planks	—	—		
(in bales	—	—	1000k	100
Flax (tilled, in bales	—	—	1000k	90
Laundry	c.m	120	c.m	100
Liquids.	—	—		
Liquors and alcoholic beverages (in cases	1000	180	1000	135
Liquors and alcoholic Beverages (in casks	1000	150	1000	90
Wines (in cases, except ting Champagne	1000	180	1000	120
Wines (in casks, except ting Champagne	1000k	150	1000k	90
Champagne wines in bottles	250 Bottles	120	250 Bottles	90
Vinegar (in cases)	1000k	180	1000k	120

C-U

		Per mail Boats		Per cargoes
Vinegar (in casks.	1000 k	150	1000 k	90
Spectacles or eyeglass work	c.m	120	c.m	100
Engines and mechanics up to 2000 k	1000	100	1000	80
Engines and mechanics from 2001 k to 5000 k	1000 k	140	1000 k	110
Empty wooden tanks	c.m	90	c.m	55
Wicks for incandescent work	c.m	90	c.m	75
Marble (in pieces for mosaic in bags.	—	—	1000	45
Marble (for artistic work	c.m	150	c.m	125
Morocco-leatherwork	c.m	120	c.m	100
Copper mattes	—	—	1000	75
Piano mechanics	c.m	90	c.m	75
Haberdashery.	c.m	120	c.m	100
Furniture (ancient and old stores	c.m	150	c.m	125
Industrial furniture	c.m	120	c.m	100
Wicker furniture	c.m	80	c.m	60
Grindstones & millstones	—	—	1000	60
Second hand furniture (framed or in cases)	c.m	90	c.m	75
Articles of fashion	c.m	120	c.m	100
Muriate of potash (bags	—	—	1000	45
Mother of pearl (raw)	c.m	90	1000 k	100
Bone black (in casks	—	—	1000 k	75
" (in bags	—	—	1000	70
Dry nuts (in bales)	1000	240	1000	150

or ad valorem.

		Per mail Boats		Per cargoes
Fancy articles	c.m	120	c.m	100
Artistic objects and for collections	c.m	150	c.m	120
Ochre and earth for colours (in casks)	—	—	1000 k	55
Flower bulbs	c.m	90	c.m.	75
Oleo-stearine	—	—	1000	75
Optics	c.m	120	c.m	100
Church ornaments	c.m	90	c.m	75
Wicker (in packages.	—	—	1000	150
Crushed bones (in bags	—	—	1000	75
Tools (hardware)	1000 k	100	1000 k	50
Door mats	c.m	80	c.m	60
Straw covers for bottles	—	—		
(in Bales. pressed.)	—	—	1000 k	120
Stationery	c.m	120	c.m	100
Cigaret paper	c.m.	90	c.m	70
Writing paper	c.m	90	c.m	70
Drawing paper	c.m.	90	c.m	70
Straining paper	c.m	90	c.m	70
Wrapping and printing paper (in cases. (bales and rolls	c.m	90	c.m	70
Tapestry paper	c.m	90	c.m	70
Peel paper	c.m	90	c.m	70
Perfumery	c.m.	120	c.m	100
Trimming.	c.m	120	c.m	100
Feeding pastes	—	—	1000 k	120
Hides (raw and dry in bale	1000	120	1000 k	100

or ad valorem

		Per mail boats		Per cargo
Hides and leather				
wrought others than pelteries.	c.m	120	c.m	100
Pelteries and furs	c.m	200	c.m	175
Phonographs (and parts)	c.m	90	c.m	75
Cut stones finished off.	—	—		
Less than 1000k	—	—	1000	75
Lava stone (Volvic)	—	—		
free on board	—	—	c.m.	75
Stones and marble blocs				
up to 2000k	—	—	1000k	60
Stones and marble blocs	—	—		
from 2000k to 10.000k	—	—		
hoisting included.	—	—	1000	90
Wooden pipes	c.m	90	c.m	75
Plants (alive)	c.m	90	c.m	75
Photo. plates	c.m	120	c.m	100
Plaster in bags	—	—	1000	45
Unmanufactured feathers for attire	c.m	90	c.m	75
Dressed feathers for attire	c.m	60	c.m	50
Hair, waste of hair and	—	—		
hair wadding. (in bales	c.m	70	1000k	150
" " " in cases	c.m	70	c.m	50
Porcelain	c.m	90	c.m	70
Porcelain (of Limoges origin	—	—		
to be justified)	—	—	1000k	175
Potash (from Alsace. in casks	—	—	1000k	35
Potash (from Alsace, in bags	—	—	1000	30

		Per mail boats		Per cargo
Pharmaceutic produce	1000k	120	1000k	10
	or per cubic metre			
Prussiate of potash	—	—	1000k	90
Clocks (common)	c.m	90	c.m	75
Hardware and lock-smith ware	1000k	100	1000k	80
	or per cubic metre			
Medecinal roots	1000	135	1000k	90
Copper scrapping.	—	—	1000k	75
Red of antimony	c.m	90	1000k	150
Ribbons	c.m	120	c.m	100
Sand for moulding work.	—	—	1000	45
Sand for glass making	—	—	1000k	30
Sand for lithography	—	—	1000k	60
in cases			or per c.m	
Crocus or saffron.	c.m	120	c.m	100
Sardines and fish in oil	c.m	90	1000k	90
Soap. (ordinary. others	—	—	—	—
than for perfumery (cases)	—	—	c.m	60
Sawdust	—	—	1000	90
Slag of gold (in bags	—	—	1000	45
Saddlery and harness	c.m	120	c.m	100
Artificial silk.	c.m	120	c.m	100
Bristles of hogs.	c.m	120	c.m	100
Silk goods and raw silk	c.m	120	c.m	100
Metallic soldering.	—	—	1000k	90
Statues (plaster, imitation	—	—	—	—
stone cardboard and terra	—	—	—	—
cota.	c.m	120	c.m	75
Pictures	c.m	150	c.m	125
		or ad valorem.		
Carpets	c.m	120	c.m	100
				c-c

		Per mail boats		Per cargo
apestry	c.m	150	c.m	125
uff. cleats	–	–	1000k	60
rude tartar	–	–	1000	60
otter's earth (fire proof	–	–	1000	45
issues (all sorts)	c.m	120	c.m	100
etallic cloth	c.m.	90	c.m	75
aw in tresses and straw	–	–	–	–
hats not trimmed	c.m	60	c.m	50
ess-point	c.m	120	c.m	100
nilla	c.m.	120	c.m	100
		or ad valorem		
oket material (in bales	c.m	45	c.m	30
oket material. in cases	c.m	65	c.m	50
rec (pressed in bales)	–	–	1000k	90
elvet	c.m	120	c.m	100
eliter (or vert de gris	–	–	1000k	75
arnish (thick)	c.m	90	c.m	80
atch glasses	c.m	120	c.m	100
lass work	c.m	90	c.m	70
		or per 1000k.		

inimum of freight 45 francs

ipping tax 6.25 per tax ton minimum 1tc

abor tax 0.05 cent per 1000k minimum 0tc 10c.

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icles for which no rates by mail boats
provided can be accepted on same boats
-same rates as on cargo boats

if latter not available and provided space is available

Valuables

Jewels, clockwork, gold and silver works and valuable objects	1% minim	55 fr
Diamonds, precious stones. pearls up to 100.000 fr	3/4% minim	30t
Diamonds, precious stones pearls over 100.000 fr	1/4% minim	50t
Bonds, titles, cash, and precious metals (up to. 50.000 fr.	3/4% minim	45t
" " from 50.000 to 200.000 francs.	1/2% minim	375t
" " from 200.000 fr to 500.000 fr	1/4% minim	1000t
f. " " from. 500.000 fr and over	1/8% minim	1250t
Shipping tax	1 tr. for each parcel	

C-T

Small Parcels:

(Samples) of a value not over 100 frs value

upto 0.030 minimum (per unit 12

upto 0.075 - - 15

and over at the rate of 3 per fraction of

Shipping tax 6 ta 25 c. per cubic meter minimum 1f for 0.025

each receipt

Remark Exceptionnaly, samples shipped at same time as goods on freight, are accepted for 100 frs per cubic meter with a minimum of 10 frs.

Important notice. Concerning shipments accepted as freight to be collected at destination, rates on present tariff. are to be converted in dollars on a basis ~~of~~ upon of five francs for a dollar fixed

1699

Additional Record Before Shipping Board.

The two following documents consist of respondent's motion to dismiss complainant's complaint before the Shipping Board, and respondent's motion to dismiss complainant's amended complaint before the Shipping Board.

These two documents, although not produced and offered in evidence on the trial, are printed herein in accordance with the statement of the Trial Judge at page 69 herein, in which he stated 1700
that any additional exhibits which were used before the Shipping Board which may not have been physically produced in Court may be referred to by counsel on either side or actually physically produced, if that be possible, and that they are deemed to be in the presence of the Court.

1701

1702 *Additional Record Before Shipping Board.*

UNITED STATES OF AMERICA,

UNITED STATES SHIPPING BOARD.

AMERICAN TOBACCO COMPANY, INC., Complainant, against COMPAGNIE GENERALE TRANSATLANTIQUE, Respondent.	Docket No. 13.

1703

COMES Now the respondent in the above-entitled cause and moves the Board to dismiss the Complaint herein, and in support of said motion submits:

FIRST: That the allegations of the said complaint, as contained in paragraphs "Second", "Third", "Fourth", "Fifth" and "Sixth" thereof, fail to show that the United States Shipping Board has any jurisdiction over the said respondent, or over the subject matter of the said complaint.

1704

SECOND: That it appears in the said complaint that this respondent is a foreign Corporation, organized and existing under the laws of the Republic of France, engaged as a common carrier in the transportation by water of passengers and freight on the high seas between ports of the Republic of France and the United States of

1705

America, and is not engaged in interstate or intrastate commerce.

THIRD: That the said complaint does not show that the respondent is engaged as a common carrier in the transportation by water of passengers and freight between ports of the same State, or ports of different States of the United States of America.

FOURTH: That the said complaint does not show that the respondent is engaged as a common carrier in the transportation by water of passengers and freight on any ships carrying the flag of the United States.

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FIFTH: That the said complaint shows that the respondent transported the merchandise referred to in the complaint on ships of the Republic of France, from ports in France to ports in the United States, and further shows that all of such shipments originated in the Republic of France.

1707

SIXTH: That the said complaint alleges nothing but conclusions, and fails to set forth the names of the other shippers to whom it is alleged the respondent granted different rates for carriage of merchandise, and fails to set forth the separate dates when such transportation at different rates was made, the articles of merchandise so carried, and the ships upon which the same were carried, and the ports from and to which the same were carried, nor the rate at which it is alleged the same were carried.

1708 *Additional Record Before Shipping Board.*

WHEREFORE the said respondent prays that the complaint herein may be dismissed.

COMPAGNIE GENERALE TRANSATLANTIQUE,
By
General Representative for the
United States and Canada.

JOSEPH P. NOLAN,
Attorney for Respondent,
25 Broad St., New York City.

1709 State of New York, }
County of New York, } ss.:

ANTOIN BORDES, on his oath deposes and says:

That I am the General Representative for the United States and Canada of the Compagnie Generale Transatlantique, the within-named respondent, on whose behalf I make this affidavit; that I have read the foregoing motion to dismiss and know the contents thereof, and that the same is submitted in good faith and not for the purpose of delay.

1710 ANT. BORDES.

Subscribed and sworn to before me, a Notary Public in and for the Above-named County and State, this day of May, 1921.
Public in and for the above-named County and State, this 12th day of May, 1921.

HUGH D. SMYTH,
Notary Public, Kings County 302,
Kings County Register 2306,
Certificate filed New York County 908,
New York County Register 2682.

(Seal)

Additional Record Before Shipping Board. 1711

UNITED STATES OF AMERICA,

UNITED STATES SHIPPING BOARD.

AMERICAN TOBACCO COMPANY, INC., Complainant, against COMPAGNIE GENERALE TRANSATLANTIQUE, Respondent.	Docket No. 13.

1712

COMES Now the respondent in the above-entitled cause and moves the Board to dismiss the amended complaint herein, and respectfully requests that the motion made to dismiss the original complaint be considered as made to apply to the complaint as amended.

WHEREFORE the said respondent prays that the amended complaint herein may be dismissed. 1713

COMPAGNIE GENERALE TRANSATLANTIQUE,
By OSCAR R. CAUCHOIS,

Acting General Representative for
the United States and Canada.

JOSEPH P. NOLAN,
Attorney for Respondent,
25 Broad Street, New York City.

State of New York, }
County of New York, } ss.:

Oscar R. Cauchois, on his oath deposes and says:

That I am the Acting General Representative for the United States and Canada of the Compagnie Generale Transatlantique, the within-named respondent, on whose behalf I make this affidavit; that I have read the foregoing motion to dismiss and know the contents thereof, and that the same is submitted in good faith and not for the purpose of delay.

Oscar R. Cauchois.

Subscribed and sworn to before me,
a Notary Public in and for the
above-named County and State,
this 21st day of July, 1921.

Hugh D. Smythe,
Notary Public, Kings County 302,
Kings County Register 2306,
Certificate filed New York County 908,
New York County Register 2682.

1717

Stipulation and Order Settling Bill of Exceptions.

It is hereby stipulated and agreed that the foregoing contains all the proceedings and exhibits material to consideration, of the writ of error herein, and that the same may be settled and ordered on file as the bill of exceptions herein.

Dated, New York, October , 1928.

1718

JOSEPH P. NOLAN,
Attorney for Plaintiff-in-Error.

JONATHAN H. HOLMES,
Attorney for Defendant-in-Error.

So ordered,

FRANCIS J. WINSLOW,
U. S. D. J.

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Petition for Writ of Error.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

COMPAGNIE GENERALE TRANSATLANTIQUE,
Plaintiff-in-Error,
(Defendant Below),
against
1721 AMERICAN TOBACCO COMPANY,
Defendant-in-Error,
(Plaintiff Below).

Compagnie Generale Transatlantique, the plaintiff-in-error herein, feeling itself aggrieved by the direction of a verdict in favor of the plaintiff below in this cause, and the judgment entered on the 25th day of November, 1927, in the Office of the Clerk of the United States District Court for the Southern District of New
1722 York, comes now by its attorney and petitions this Court for an order allowing the plaintiff to prosecute a writ of error to the Honorable the Judges of the Circuit Court of Appeals of the United States for the Second Circuit, under and according to the Laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the plaintiff-in-error shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings of this Court be suspended and stayed until the deter-

1723

mination of the said writ of error by the said Circuit Court of Appeals of the United States for the Second Circuit.

WHEREFORE this plaintiff-in-error, Compagnie Generale Transatlantique, prays for the allowance of a writ of error and for an order fixing the amount of said bond and for such further orders and process as may cause the errors complained of to be corrected by the said Circuit Court of Appeals of the United States for the Second Circuit, and that the direction of a verdict herein and judgment be set aside.

1724

And your petitioner will ever pray, etc.

Dated, New York, December 27th, 1927.

JOSEPH P. NOLAN,
Attorney for Plaintiff-in-Error,
#60 Broad Street,
Borough of Manhattan,
New York City.

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Assignment of Errors.

UNITED STATES DISTRICT COURT,

For the Southern District of New York.

Compagnie Generale Transatlantique,
Plaintiff-in-Error,
(Defendant Below),
against
1727 American Tobacco Company,
Defendant-in-Error,
(Plaintiff Below).

Compagnie Generale Transatlantique, the defendant below, and the plaintiff-in-error, herein, does hereby make and file the following assignments of error:

The United States District Court, in and for the Southern District of New York, during proceedings herein, erred in the matters following:

1728

1. In directing a verdict for the plaintiff for the sum of Seventy-eight Thousand Two Hundred thirty and 09/100 ($78,230.09), at the close of the entire case, to which direction of a verdict the defendant below duly excepted.

The said motion and ruling thereupon are as follows:

> "Mr. Lannon: I suppose I should get my motion for a direction of a verdict upon the Record on the grounds stated. I ask

formally for a direction of a verdict in my favor.

* * * * *

Mr. Lannon: I will make my motion now for a direction of a verdict and will state the grounds.

The Court: Yes.

Mr. Lannon: First, on the ground that the defendant has failed to overcome the prima facie case made out by the plaintiff on the supplemental report, findings and 1730
order of the Shipping Board; the second ground, that there has been no evidence submitted whatsoever to overcome any of the evidence that was before the Shipping Board. On the further ground that the French ships which carried these goods are not French Territory when they come within our harbor, that they simply have a personal privilege; that the French Line has obtained authority to do business within the State of New York and has subjected itself not only by the fact that the 1731
Commerce clauses of the Constitution give the Congress power to make laws affecting the foreign commerce of the United States, but on the additional ground that they have come here and have asked our State to permit them to do business here, and by so doing they have obligated themselves to follow the law of our country, irrespective entirely of what rights we may have under the Act of Congress, and on the further ground that in the contracts that are made by the French Line they are

1732

made subject to the laws of the United States which might be applicable thereto when they undertake to transport goods to this country and use our ports.

* * * * *

The Court: Addressing myself to the motion of the plaintiff for the direction of a verdict, in the first place I think the statute is applicable to domestic and foreign vessels using our ports and availing

1733

themselves of the privilege of entering our ports. For the Court at this juncture to deny the jurisdiction of the Shipping Board would be to hold that the statute which is the subject matter under discussion does not apply to foreign vessels entering our ports, and in effect would render inoperative and of no effect the conclusion of the Shipping Board in the case which was the subject of their inquiry and which is now the subject matter of this suit.

1734

The Supreme Court has passed upon the so-called Seamen's Acts, holding that Congress had power to legislate concerning contractual relations and compensation of seamen employed in foreign countries for work on vessels that avail themselves of the privilege of entering our ports. By analogy I feel bound to hold that Congress had the power in the present instance to legislate concerning discrimination in rates, and inasmuch as the statute makes the proceedings before the Shipping Board

a prima facie case, the only other preliminary inquiry for us is whether the statute be applicable and not in violation of the provisions of the Constitution.

The further inquiry remaining is whether there is evidence to sustain the findings of the Shipping Board—not whether the evidence, if presented to this Court in the first instance, might persuade the Court to come to a different conclusion, but whether the Shipping Board, vested with its power, had before it evidence of a substantial nature to support their findings.

In the absence of any proof to the contrary I must assume that they had such evidence before them. Therefore, without regard to the view of this Court if the case were tried in the first instance here, it becomes my duty, following particularly the case in the Supreme Court referred to by counsel, the citation of which I have not at the present moment before me, to direct a verdict in favor of the plaintiff for the sum of $78,230.09, that being the amount of principal indicated by the Shipping Board as excess freight charges and the interest thereon to date, as computed by the witness.''

* * * * *

Mr. Nolan: And I also ask for an exception to your Honor's direction of the verdict in favor of the plaintiff.

* * * * *

The Court: Yes, and I think your rights are fully protected by the exceptions noted,

1738 *Assignment of Errors.*

and the jury is now directed to return a verdict as stated.

(Pursuant to the direction of the Court, the jury finds a verdict in favor of the plaintiff in the sum of $78,230.09.)"

2. In denying the motion of the defendant, Compagnie Generale Transatlantique, to set aside the verdict of the jury as against the law and the evidence; which motion was duly made and de-
1739 nied and exceptions to said denial duly taken.

3. In denying the motion of the defendant, Compagnie Generale Transatlantique, for a direction of a verdict in favor of the said Compagnie Generale Transatlantique, at the close of the entire case; which motion was duly made and denied and exceptions to said denial duly taken.

The said motion and the ruling thereupon, and exception to the denial thereof are as follows:

"Mr. Nolan: I want to make a motion
1740 for the direction of a verdict, but in making the motion, sir, I reserve the right to withdraw and to go to the jury in case your Honor does not agree with my point —to go to the jury as to certain facts which I shall elucidate afterwards.

The Court: In other words, by both sides moving, as I assume you are, you do not want to take it from the jury, but ask for a direction.

Mr. Nolan: Yes, sir.

The Court: And failing in that you want to go to the jury.

Mr. Nolan: Yes, sir. I ask your Honor to decide in my favor and, if not, I want to go to the jury.

* * * * *

Mr. Nolan: Yes, sir; but I want to state my grounds.

I move for the direction of a verdict upon the ground that the cause of action is an attempt to enforce a statute of the United States extra-territorially—that is, in the Republic of France, which under the 1742
constitution the courts have no power to do; all of the contracts, 279 of them, were made in the Republic of France between French parties, over a period of two years for a performance in France and upon French vessels, which under our law are French territory, and that the contracts are therefore subject to the law of France and not capable of being attacked collaterally here either in this proceeding or any other collateral proceeding; upon the further ground that the intention of the par- 1743
ties as disclosed by the contract itself here and its wording was to make the contract subject to the law of France and that there is no evidence offered by the plaintiff that the intention of the parties was to subject the contract to any other law than that of France; upon the further ground that the contracts in the bills of lading provide in substance that the law of France shall govern this contract, all the contracts, and that this Court therefore should apply the

1744 law of France in the construction and judgment of the contracts before the Court; on the further ground that the enforcement of the statute creating the Shipping Board, and the amendments of that statute, as interpreted and applied in this case, deprives the defendant of its property in violation of the Constitution of the United States and more specifically in violation of the Fifth Amendment to the Con-

1745 stitution; upon the further ground that the enforcement of these statutes against the defendant in this case deprives the defendant of the freedom to contract in a foreign jurisdiction where such contracts under the laws of such jurisdiction are competent and legally made; upon the further ground that the contracts were fully executed by the parties to be bound thereby, and that the presumption of law is that the contracts were supported by a legal and valid consideration running from

1746 this plaintiff to this defendant or from the plaintiff's assignors, whichever attitude is taken toward this defendant; upon the further ground that the enforcement of the Shipping Board statutes and its amendments as interpreted here, deprives the defendant of the benefit to contract to collect rates which the shippers were obligated by their agreement in those contracts to pay to the defendant under the law of France, and deprives this defendant of its property without due process of

law, in violation of the Constitution and the Fifth Amendment; upon the further ground that assuming but not conceding that the laws of the United States apply to the contracts, when properly construed, the facts and evidence before this Court now show that there was no preference or discrimination in rates within the meaning of the Shipping Board statutes, but the difference in rates was based upon a fair and reasonable difference in services; 1748 on the further ground that the difference in rates shown in the evidence is based upon difference in services, and are reasonable differences; upon the further ground that the presumption of law is that the consignor is obligated to pay the freight unless a special clause is incorporated that the consignee shall pay the same; and upon the further ground that assuming that the laws of the United States apply to this action, then the action cannot be maintained because it is an at- 1749 tempt to collect more than one penalty in the same action; and upon the ground that the action in itself is in the nature of an attempt to collect a penalty or penalties; upon the further ground that this Court has no jurisdiction of the subject matter; upon the further ground that the acts of Congress, including this particular act creating the Shipping Board, and its amendments, have no extra-territorial force; upon the further ground that the

delivery of the goods and the payment of freight in the United States do not control the question of the law of which country shall apply to the contract, and upon the further ground that the plaintiff has failed to make out any case whatsoever against this defendant.

* * * * *

Mr. Nolan: I might say to your Honor in answer to those grounds and in support
1751 of my own, that you will bear in mind there is nothing in the Shipping Board Act which says that no foreign ship shall do business in or come within the harbor of the United States unless so and so. Nor is there any provision that says a ship which will not conform to this regulation shall be driven from the United States. There is no such tag put on my client to do business in the State of New York.

The Court: In order that your rights may be preserved, I will first deny the mo-
1752 tion on the part of the defendant. I will say that at this juncture, because you say you want to move to go to the jury on some question of fact.

Mr. Nolan: Yes, sir; I do.

The Court: Otherwise you might be deemed to waive it.

Mr. Nolan: I request that I go to the jury on certain facts I will mention to the Court. May I take an exception to the ruling of the Court?

The Court: Yes. * * *"

1753

4. In denying the motion of the Compagnie Generale Transatlantique for a dismissal of the complaint and a direction of a verdict in favor of the defendant upon the opening statement of plaintiff's counsel to the Jury, and upon the complaint, which motion was duly made and was denied by the Court, and exception to such ruling was duly taken.

The defendant below duly moved for a dismissal of the complaint and a direction of a verdict in its favor upon the grounds that the Court had 1754
no jurisdiction of the subject matter; upon the ground that the action was an attempt to take the property of the defendant without due process of law within the Fifth Amendment to the Constitution of the United States, and an attempt to declare invalid a contract legally entered into in a foreign country and which was duly executed and carried out prior to the institution of the proceeding.

5. In denying the motion of the Compagnie Generale Transatlantique for a dismissal of the 1755
complaint and a direction of a verdict at the close of the plaintiff's case, which motion was duly made, and which was denied by the Court and exception duly taken.

Said motion was made upon the grounds that the action was an attempt to assess a penalty and damages upon the defendant upon a contract, or series of contracts, fairly made and entered into in a foreign country and duly completed between the parties; upon the ground that the Shipping Board has no jurisdiction of such a subject-mat-

1756 *Assignment of Errors.*

ter, and upon the ground that the action is an attempt to give extraterritorial effect to a law of the United States so as to invalidate a contract fairly made and entered into between the parties in a foreign country; that it constitutes the taking of the property of the defendant without due process of law within the meaning of the Fifth Amendment of the Constitution of the United States; and that the presumption is that the parties to the contracts subjected themselves
1757 to the laws of such foreign country; and that the laws of the United States have no extraterritorial force; and upon the further ground that the remedy sought in this action, and sought before the Shipping Board, is in the nature of a penalty that was never in contemplation of this contract and that in this contract it is an attempt to recover a series of penalties, in fact 279; and that the District Court has no jurisdiction.

Said motion was denied and exception duly taken.

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6. In admitting in evidence the certified copy of the report and findings and order of the Shipping Board, which was received and marked in evidence as plaintiff's Exhibit #1.

The grounds of error in the admission of said exhibit were that the said certified record produced did not comprise the entire record before the Shipping Board; and that the jurisdiction of the Shipping Board must be pleaded and proved; and that the record of its proceedings did not of itself constitute evidence of its jurisdiction of the cause pending before it.

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7. In denying the motions of the defendant Compagnie Generale Transatlantique to submit to the Jury certain issues of fact, to wit:

(1) Whether the intention of the parties to the contracts herein was to subject the contracts themselves to the Laws of France, or to the Laws of the United States;

(2) Whether the differences in rates complained of were reasonable in view of the circumstances and the difference in services.

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Said motion and the rulings thereupon, and the exception of the denial thereof, are as follows:

"Mr. Nolan: I request that I go to the Jury on certain facts I will mention to the Court.

* * * * *

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The Court: Yes. You may reserve the right to move to go to the jury on certain questions of fact.

Mr. Nolan: Yes, sir.

The Court: Do you want to make that motion now or at the conclusion of these matters?

Mr. Nolan: I think I might make it now and your Honor can dispose of it one way or the other.

* * * * *

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Mr. Nolan: If your Honor please, on behalf of the defendant I ask to go to the jury upon the question whether the intention of the parties in the contracts herein was to subject the contracts themselves to the laws of France or to the laws of the United States; second, whether the differences in rates complained of were reasonable in view of the circumstances and the difference in service. * * *

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The Court: Those requests are severally denied, and exception will be noted in each instance. The motion to go to the jury will be deemed to have been seasonably made, and without prejudice to the motion made a short time ago by counsel for the defendant for the direction of a verdict in his favor, which was denied."

The aforesaid motions were denied by the Court and exception to such ruling was duly taken.

1764

8. In denying the motions of the defendant to charge the jury as a matter of law that the intention of the parties must be governed by the law of France, and that the difference in rates was reasonable under the statutes.

Said motions and the rulings denying the said motions and exceptions to such ruling are as follows:

"Mr. Nolan: * * * I ask your Honor to charge as a matter of law that the intention of the parties must be governed by

the law of France, and that the difference in rates was reasonable under the statute.

* * * * *

The Court: Those requests are severally denied and exception will be noted in each instance.''

9. In denying the motion of the Compagnie Generale Transatlantique, the defendant below, for a direction of a verdict in favor of the said Compagnie Generale Transatlantique at the close of the entire case, upon the additional ground that it appears in the evidence that under the laws of France it was a necessary condition precedent to the maintenance of an action upon the bill of lading in evidence that any such action should be begun within a period of one year after the cause of action arose, or otherwise that the obligation was extinguished.

The defendant below duly moved for a direction of a verdict and the said motion was denied and the defendant duly excepted to the denial of said motion.

WHEREFORE plaintiff-in-error prays that the judgment against it be reversed.

JOSEPH P. NOLAN,
Attorney for Plaintiff-in-Error,
#60 Broad Street,
Borough of Manhattan,
New York City.

1768

Citation.

By the Honorable, the President of the United States, to the Honorable, the Judges of the United States District Court for the Southern District of New York.

To: American Tobacco Company, and Jonathan H. Holmes, Esq., Attorney for the American Tobacco Company, Greeting:

1769

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, City of New York, in the District and Circuit above mentioned, on the 4th day of February, 1928, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein Compagnie Generale Transatlantique is Plaintiff-in-Error, and the American Tobacco Company is the Defendant-in-Error, and you are to show cause, if any there be, why the direction of the

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verdict and judgment in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, City of New York, in the District and Circuit above named, this 6th day of January, 1928.

(Seal)

Henry W. Goddard,
United States District Judge.

1771

Stipulation.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

COMPAGNIE GENERALE TRANSATLANTIQUE,
Plaintiff-in-Error,
(Defendant below),
vs.
AMERICAN TOBACCO COMPANY,
Defendant-in-Error,
(Plaintiff below).

1772

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, October , 1928.

1773

JOSEPH P. NOLAN,
Attorney for Plaintiff-in-Error.

JONATHAN H. HOLMES,
Attorney for Defendant-in-Error.

1774

Clerk's Certificate.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

COMPAGNIE GENERALE TRANSATLANTIQUE,
Plaintiff-in-Error,
(Defendant below),

vs.

1775 AMERICAN TOBACCO COMPANY,
Defendant-in-Error,
(Plaintiff below).

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

1776 In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this day of October, in the year of our Lord one thousand nine hundred and twenty-eight and of the Independence of the said United States the one hundred and fifty-third.

ALEX. GILCHRIST, JR.,
(Seal) Clerk.

Circuit Court of Appeals

SECOND CIRCUIT.

AMERICAN TOBACCO COMPANY,
Defendant in Error
(Plaintiff below)

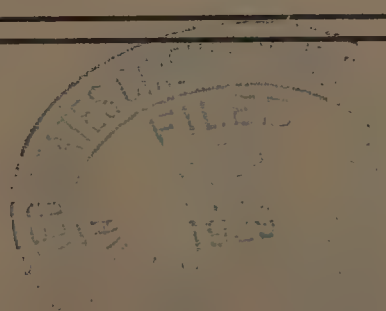
against

COMPAGNIE GENERALE TRANSATLANTIQUE,
Plaintiff in Error
(Defendant below)

BRIEF FOR PLAINTIFF IN ERROR.

JOSEPH P. NOLAN,
Attorney for Plaintiff in Error,
No. 60 Broad Street,
New York, N. Y.

ANTHONY J. ERNEST,
JOSEPH P. NOLAN,
of Counsel.



CIRCUIT COURT OF APPEALS,
SECOND CIRCUIT.

American Tobacco Company,
Defendant in Error
(Plaintiff below)

against

Compagnie Generale
Transatlantique,
Plaintiff in Error
(Defendant below)

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

Error to Review Judgment for $78,260.09 entered November 25, 1927, in the United States District Court for the Southern District of New York, after a trial before Horonable Francis A. Winslow and a jury.

PARTIES.

The parties herein will be referred to as they were described in the court below. The plaintiff-in-error will be referred to as the defendant, and the defendant-in-error as the plaintiff.

FACTS.

This action was brought under Sections 16, 17 and 22, of the Shipping Act, to recover upon a report and

finding of the United States Shipping Board for alleged prejudicial and unlawful freight rates charged to the plaintiff by the defendant.

At fol. 15 it is herein quoted from the report of the board, as far as material, as follows:

> "the charges collected from the complainant were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers * * *."

(Note: It will be noted that the discrimination etc., was held to have occurred

> "between Shippers", fol. 15).

On July 17, 1923, the Shipping Board made its finding and report, marked Exhibit A (fols. 16, 31-54).

On December 29, 1925 the Shipping Board made its second report (fols. 18, 57-72).

At fol. 34 the report says in part, referring to the defendant herein, that in its "common carrier capacity it is subject to the applicable provisions of the Federal Shipping Act of 1916."

At fol. 38 it appears by the aforesaid report that:

> "It is shown by the evidence that these charges were calculated upon a fixed basis of five francs to the dollar in New York, and that on prepaid shipments of identical commodities carried for other of its patrons from Bordeaux and Havre to New York during the same period, and in many instances upon the same vessel, the respondent accepted payment in France of freight charges in francs at the current rate of exchange. The result was that the complainant paid more than its competitors for transportation of the same character of commodity from and to the same ports."

At fols. 40 etc., a schedule of the different rates of exchange is set forth.

It is stated at fol. 43 that appearing upon each of the printed tariffs is the notation:

"IMPORTANT NOTICE: FOR SHIPMENTS ACCEPTED WITH FREIGHT PAYABLE AT DESTINATION, THE RATES OF THIS TARIFF SHALL BE CONVERTED INTO DOLLARS ON THE FIXED BASIS OF FIVE FRANCS PER DOLLAR."

And the report continues (fol. 44):

"Evidence is presented on behalf of the French Line to the effect that, owing to the stringent financial situation prevailing in France during the period covered by the the complaint the carrier found it desirable to obtain possession of the freight money in France at the earliest possible date, and in order to induce prepayment of charges it was found expedient to adopt the method of conversion of rates indicated in the above quoted tariff provisions. In this connection no evidence is of record tending to show why the respondent did not resort to the fundamental right inherent in it as a common carrier to demand and receive payment of freight charges as a condition precedent to transportation."

The report fails to take cognizance of the evidence that the defendant also, upon collect payments, was put to the expense of forwarding the money to Europe; ran the risk of loss of its ship and consequent loss of freight; ran the risk of carriage and return carriage, or sale of the goods, if for any reason beyond the power and control of the carrier the goods were refused; and had the additional expense of insurance (varying from one to fifty per cent.) on the goods in transportation, which it would not have where the freight was prepaid.

Cauchois, p. 329, fols. 985 et seq. pp. 330, 331, fols. 990, 991.

At fol. 47 the report points out that the complainant's "knowledge or lack of knowledge" of undue discrimination in the tariff charges is plainly immaterial.

The report further, at fol. 48 etc., states that, in order to determine whether there was prejudice and discrimination, it is pertinent "to consider whether the service furnished the complainant differed from that furnished shippers * * * who prepaid * * *"

At fol. 49:

> "The evidence of record indicates that, from a transportation standpoint, the shipments of the complainant were similar in every respect to those of shippers * * * who prepaid their freight."

That service was identical for "each class of shippers" (fol. 49).

And that it followed from the foregoing considerations that unless the difference in rates was warranted that discrimination is established.

In its second report of December 29, 1925 (fol. 57), the board pointed out that its first report did not afford a basis (fol. 62) for determining the amount of reparation.

At fol. 63 etc., the second report indicates that the "complainant and other tobacco companies with which it competed" used cigarette paper of the kind in question. And that all of such cigarette paper, with slight exceptions, was (fol. 64) "used in the manufacture of cigarettes by both the complainant and such other tobacco companies" and said cigarette paper "likewise came from France and was purchased direct or through New York representatives of French manufacturers."

The alleged competitors are as follows (fol. 65): American Tobacco Co., Liggett & Myers Tobacco Co., R. J. Reynolds Tobacco Co., Pierre Lorilard Co., Surbrug Cigar Co., and others.

At fol. 67 the second report states that it is "undeniable" that the complainant suffered etc.

And the second report then continues (fol. 68):

> "As upon the record the injury thus sustained is fairly comparable to the difference between the

> transportation charges exacted of the complainant and what they would have been had its shipments been accorded charges based on the current rates of exchange similarly as were those of its competitors together with interest, that difference and interest constitute the sum to which the complainant is entitled as a reward of reparation."

The second report also holds that the damages are to be calculated upon the rate of exchange "on the dates of the complainant's bills of lading, rather than * * * upon the dates on which the charges were approved by it for payment."

And, accordingly, an order was made for the payment of the amount claimed with interest (fol. 75).

RULINGS BY THE DISTRICT COURT.

The District Court directed a verdict in favor of the plaintiff for $78,230.09, (fol. 250) upon motion of the plaintiff; to which the defendant duly excepted (fol. 253).

The District Court denied the motion for a direction of a verdict in favor of the defendant (fol. 243) to which the defendant excepted (fol. 254).

And the defendant requested the District Court to submit to the jury the question whether the intention of the parties was to subject the contract to the laws of France, and whether the differences in rates were reasonable in view of the circumstances and the difference in service.

At fols. 251 etc., it appears:

> "Mr. Nolan: If your honor please, on behalf of the defendant I ask to go to the jury upon the question whether the intention of the parties in the contracts herein was to subject the contracts themselves to the laws of France or to the laws of the United States; whether the differences

complained of were reasonable in view of the circumstances and the difference in service."

These requests were denied and exception taken (fols. 252-253).

Defendant further asked the District Court to charge as a matter of law that the intention of the parties was to be governed by the law of France and that the difference in rates was reasonable under the statute (fol. 252). The request was denied and exception taken (fols. 252-253).

THE BILL OF LADING OR CONTRACT OF AFFREIGHTMENT.

Amongst other things the bill of lading offered in evidence as defendant's exhibit B, which was the same as all the other 278 bills of lading, except in a matter not material in this case, (fols. 336-337) showed the following:

"Rule 18. In case of differences in the interpretation of the foregoing the French text is the only one that applies.

All litigations arising out of interpretation or execution of this contract or bill of lading shall be judged according to French law at The Tribunal of the place indicated in the bill of lading and the owners of the ship and claimants declare formally to accept its competency."

Contentions of Plaintiff-in-error.

Plaintiff-in-error contends that the Shipping Board and the District Court had no jurisdiction of this cause; and also that the Judgment below should be reversed for the reasons set forth in the following Points:

POINTS.

I.

The shipping act does not apply to this case.

(Assignment of Errors, Nos. 1, 2, 3, 4 and 5, at fols. 1727-1757).

There are several grounds supporting this proposition.

1. A contract legally made in France is not nullified by the statute.

In Jackson *v.* S. S. Archimedes, 275 U. S. 463 (decided January 3, 1928, affirming the decision of this court in 11 Fed. 2nd Series 1000) the court held that Section 10 of the Seaman's Act as amended in 1915, and the Act of 1920, does not apply to the advance payment of wages by foreign vessels made to seamen while in ports of foreign countries whose laws sanction such payments.

The contract was made in England. It was held to be valid under English law.

The voyage was from Manchester to New York.

After quoting from the decision of the court in Sandberg *v.* McDonald, 248 U. S. 185, 195, (cited and quoted below in this brief), the court referred to the case of Strathearn S. S. Co. *v.* Dillon, 252 U. S. 348, 355, as follows, page 468 etc.:

> "And later, in Strathearn S. S. Co. *v.* Dillon, 252 U. S. 348, 355 (1920), in distinguishing Section 4 of the Seaman's Act—which in express terms declared that contracts denying seamen the right to demand half of their earned wages at ports reached in the course of a voyage, *should be void,* (italics ours) and gave seamen on foreign vessels while in American harbors the right to enforce its provisions in the courts of the United States—from Section 11 of the act dealing with advanced

> wages, this court said: 'In the case of Sandberg *v.* McDonald * * * we found no purpose manifested by Congress in Section 11 to interfere with wages advanced in foreign ports under contracts legal where made. That section dealt with advances, and contained no provision such as we find in Section 4. Under Section 4 all contracts are avoided which run counter to the purposes of the statute. Whether consideration for contractual rights under engagements legally made in foreign countries would suggest a different course is not our province to inquire. It is sufficient to say that Congress has otherwise declared by the positive terms of this enactment.' "

It will be seen from the authorities herein referred to that "consideration for contractual rights under engagements legally made in foreign countries would suggest a different course" from that of avoidance and annulment, especially in the absence of constitutional or explicit statutory direction.

In Sandberg *v.* McDonald, 248 U. S. 185, the court considered the effect of Section 11 of the Seaman's Act upon a contract or contracts made in Great Britain. Briefly, the statute denied the right of the shipowner to credit for advance payment of wages. The master had deducted advances paid to the seaman in Liverpool, England. The court held that the statute did not apply to such contract. The court said in part at page 195 etc.:

> "Did Congress intend to make unvalid the contracts of foreign seamen so far as advance payment of wages is concerned, when the contract and payment were made in a foreign country where the law sanctioned such contract and payment? Conceding for the present purpose that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted, that such sweeping and important requirement is not found specifically made in the statute. Had Congress intended to make void such contracts and

> payments a few words would have stated that intention not leaving such a important regulation to be gathered from implication. There is nothing to indicate an intention, so far as the language of the statute is concerned, to control such matters otherwise than in the ports of the United States * * *.
>
> The legislation is presumptively territorial and confined to limits over which the law making power has jurisdiction. American Banana Co. *v.* United Fruit Co., 213 U. S. 347, 357.
>
> In Patterson *v.* Bark Eudora, 190 U. S. 169, supra, this court declared such legislation as to foreign vessels in United States ports to be constitutional. We think that there is nothing in this section to show that Congress intended to take over the control of such contracts and payments as to foreign vessels except while they were in our ports. Congress could not prevent the making of such contracts in other jurisdictions. If they saw fit to do so, foreign countries would continue to permit such contracts and advance payments no matter what our declared law or policy in regards to them might be as to vessels coming to our ports."

At page 196 it is said further:

> "Congress certainly did not intend to punish criminal acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress. United States *v.* Freeman, 239 U. S. 117, 120."

To the same effect are: Neilson *v.* Rhine Steamship Co., 248 U. S. 205; Hewitt *v.* Speyer, 250 Fed. 367 (C. C. A. 2nd Circuit)

In Neilsen *v.* Oregon, 212 U. S. 315, the court held that although the states of Oregon and Washington had concurrent jurisdiction over the waters of the Columbia River forming their common boundary that the courts of Oregon could not prosecute the defendant under the Oregon statutes prohibiting the use of certain nets, when

the acts were done on the Washington side of the Columbia River. The court said at page 320 etc.:

> "The present case is not one of the prosecution for an offense malum in se, but one simply malum prohibitum. Doubtless the same rule would apply if the act was prohibited by each state separately, but where, as here, the act is prohibited by one state and in terms authorized by the other, can the one state which prohibits, prosecute and punish for the act done within the territorial limits of the other? * * * Can the State of Oregon by virtue of its concurrent jurisdiction, disregard that authority, practically override the legislation of Washington, and punish a man for doing within the territorial limits of Washington an act which that state has especially authorized him to do? We are of the opinion that it cannot."

In Miguel de Larrinaga, 217 Fed. 678, Judge Hough in the District Court held that an exemption from liability valid under the law of England should apply in a case where damage occurred in Cuban waters. The court presumed that the law of Cuba in this connection was the same as the law of the United States, but the opinion continued at p. 679:

> "Admittedly this presumption runs counter to the much older and stronger one that a contract valid where made is valid everywhere. If there were no other line of reasoning presented I should hold that the presumption just referred to overrode that relied on by the libelant."

In Canada Southren R. Co. *v.* Gebhard, 109 U. S. 527, it was held that a statute of Canada permitting a railroad company to substitute other securities in place of its mortgage bonds is binding on citizens of the United States who sue in the courts of the United States to recover upon their bonds. The new securities bore interest at only three per cent. for three years and five per cent. thereafter instead of seven per cent. payable upon

the old bonds, and the new securities matured at a later date than the old bonds. Other objections were offered on behalf of the United States bondholders. The court said in part at page 537:

> "A corporation of one country may be excluded from business in another country (Paul *v.* Virginia, 8 Wall. 168), but if admitted, it must in the absence of legislation equivalent to making it a corporation of the latter country be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation."

In American Banana Co. *v.* United Fruit Co., 213 U. S. 349, as far as material to the instant case, it was held, as stated in the syllabus:

> "A statute will, as a general rule, be construed as intended to be confined in its operation and effect to the territorial limits within the jurisdiction of the lawmaker, and words of universal scope will be construed as meaning only those subject to the legislation."

In First National Bank *v.* Fleitmann, 168 App. Div. 75, the Appellate Division of the New York Supreme Court, First Department, held, where it was admitted that under the laws of Texas that ten per cent. of the amount of a promissory note should be added to the sum upon default and the placing of the note in the hands of an attorney for collection, that it is not sufficient as a defense in New York to allege that the note is unenforcible and contrary to the public policy of New York.

The court said at page 78:

> "All he (defendant) asserts is that such a provision is unenforcible in the State of New York since it is opposed to the public policy of the state. If the provision is valid in the State of Texas it

> is valid here, and will be enforced. There are numerous decisions to the effect that such a provision in a promissory note is valid and will be enforced under the laws of Texas. (Cases cited). The facts pleaded, therefore, do not constitute an a partial defence to the cause of action set out in the complaint."

In Schweitzer *v.* H. A. A. P. etc., 149 App. Div., 905, the plaintiff was a German seaman who made a contract with the defendant, a German corporation, to ship as a seaman and to return. The plaintiff was injured on the high seas. The court held that the lex loci contractis controlled the rights of the parties. (Citing Dike *v.* R. R., 45 N. Y. 113; China Insurance Co. *v.* Blank, 142 N. Y. 90; Valk *v.* Erie R. Co., 130 App. Div. 446; Liverpool R. Co. *v.* Phoenix I. Co., 129 U. S. 397).

In Birmingham Iron Co. *v.* Glen Cove S. M. Co., 78 N. Y. 30, it was held that the sale and delivery in the State of Connecticut of part of a steam engine placed in the defendant's factory in New York, afforded no lien to the plaintiff.

The court said in part at page 32:

> "The plaintiff's contract was made and performed in Connecticut, and the engine complete with the bed plate was delivered to the defendant in that state. Upon delivery there the title to the same vested in the defendant. The Woodruff Iron Works were to furnish a man to superintend the erection of the engine."

(The engine was transported to Glen Cove, New York, and placed in the defendant's starch factory).

The court held that the plaintiff had no mechanic's lien under the laws of the State of New York, because the contract was made in Connecticut.

In Laurendon *v.* Ocean Steamship Co., 183 App. Div. 559, it appeared that under a statute of Georgia a sale of turpentine in Georgia is conditional and no title passes

until payment is made. The law of New York was held not to be applicable to a sale of turpentine shipped to New York from Georgia.

2. Laws compelling payment of half wages to foreign seaman when entering American ports (Strathearn *v.* Dillon, 252 U. S. 348; Patterson *v.* Bark Eudora, 190 U. S. 169; as well as the law governing the commission of various offences upon foreign ships in American ports, see the Windrush, 250 Fed. 180, at 182, decided contemporaneously with Neilson *v.* Rhine Co.), cannot be given effect as establishing a universal law in the United States, authorizing nullification of contracts made in foreign jurisdictions, for otherwise lawful purposes.

This proposition is amply supported by the decisions already presented in this brief, and those to be set forth herein, infra.

3. The contract of affreightment was legal and valid where it was made and it will not be held to be invalid in the United States.

In the case of contracts of affreightment, it is understood and expected that the carriage will necessitate performance in other places than that where the carriage commences; but the law of lex loci contractus is uniformly applied to such contracts.

In Liverpool etc. *v.* Phoenix I. Co., 129 U. S. 397, it was said at p. 458:

> "According to the great preponderance, if not the uniform concurrence of authority, the general rule, that the nature, obligation, and the interpretation of a contract are to be governed by the law of the place where it is made, unless the parties at the time of making it have some other law in view, requires a contract of affreightment, made in one country between citizens and residents thereof, and the performance of which begins there, to be governed by the law of that country, unless the parties, when entering into the contract, clearly manifest a mutual intention that it shall be governed by the law of some other country."

In The Constantinople, 15 Fed., 2nd Series, 97, Judge Campbell, in the Eastern District of New York, held, that a contract made in Roumania for a passage to New York was governed by Roumanian law. The court said at p. 98:

> "From the facts as found in the causes at bar it appears that the contract of carriage was entered into in Roumania and performance began there, but was to be completed in this country, and, therefore, the contract is governed by the law of Roumania. Liverpool S. Co. *v.* Phoenix I. Co., 129 U. S. 397, at 458; Wiley *v.* Grand Trunk R. Co. of Canada, 227 Fed. 127, at page 130."

In Wiley *v.* Grand Trunk Railway of Canada, 227 Fed. 127, at 130 it was said:

> "The general rule that the nature, the obligation and the interpretation of a contract are to be governed by the law of the place where it is made, unless the parties at the time of making it have some other law in view, requires a contract of carriage, made in one country and the performance of which begins there to be governed by the law of that country, unless the parties, when entering into the contract, clearly manifest a mutual intention that it shall be governed by the law of some other country. The contract in such cases is single, and the performance is one continuous act. (Citing many cases). Although The Majestic (60 Fed. 624, supra) was reversed on a writ of certiorari by the Supreme Court, 166 U. S. 375, the ground of the reversal did not involve the principle stated by Judge Shipman who delivered the opinion of the Circuit Court of Appeals that a written agreement, executed and delivered in England, whereby an English corporation agrees to transport a citizen of the United States from England to this country is to be construed according to the English law, the reversal being based on the proposition that the 'conditions' printed on the back of the ticket were notices, nothing more, and could not be held as a matter of law, whether they

> were regulations for the conduct of the business or limitations upon common-law obligations, to constitute any part of the contract."

In O'Regan v. Cunard S. S. Co., 160 Mass. 356, a passenger residing in Ireland made a contract with the defendant English corporation for passage to the United States. The contract contained a clause exempting the carrier from liability for injury to the passenger. The passenger was injured on the high seas by negligence of the carrier. The court held that the English law governed the contract, saying at page 361:

> "Although the stipulation relieving the defendant from liability for injuries resulting from the negligence of its servants is against the policy of our law it is not immoral or illegal, and it being valid in Great Britain where it was made, it will be enforced on principles of comity by our courts. Milliken *v.* Pratt, 125 Mass. 374; Scudder *v.* The Bank, 91 U. S. 406; Fonseca *v.* Cunard S. S. Co., 153 Mass. 553."

In The Majestic, 60 Fed. 624, reversed on other grounds, 166 U. S. 375, it was held that the law of England applied to a ticket covering a passage from London to New York and also covering the passenger's baggage. The baggage was damaged. But the limitation in the ticket was held to apply under the English law.

In Valk *v.* Erie R. Co., 149 App. Div. 449, a contract of affreightment was made in Illinois by residents of Illinois. The contract contained a limitation of liability which was not valid in Illinois. The limitation of liability was valid in New York where the loss occurred. But the New York court held that the Illinois law governed the contract of affreightment which provided for delivery in another state, to wit, New York.

In The Titania, 19 Fed. 101, at p. 103 the District Court in the Southern District of New York held, as to a shipment from England in an English vessel, that a

limitation of liability as to damaged cargo, which limitation was valid in England, would be valid here.

> "The shipment being made in England, on an English vessel, the law of the flag governs. Lloyd *v.* Guibert, L. R. 1 Q. B. 115; Chartered Co. *v.* Netherlands, 9 Q. B. Div. 115, 10 Q. B. Div. 521; The Gaetano, 7 Probate Div. 137; Woodley *v.* Mitchell, 11 Q. B. Div. 51."

In The Oranmore, 92 Fed. 396, the shipment was made from Baltimore to Liverpool by an American Shipper in an English ship by a contract made in Baltimore. The agreement to apply the English law was enforced.

To the same effect, Baetjer *v.* C. E. Q. T., 59 Fed. 789.

In Faulkner *v.* Hart, 82 N. Y. 413, it was held that a contract of affreightment made in New York for a shipment to Massachusetts was governed by the New York law. It appeared that after delivery of the goods in Boston, and because of the refusal of the carrier to deliver them in time, they were destroyed by fire. Under the New York law the carrier was liable, although under the Massachusetts law he was not. The New York law was held to be applicable.

In Manchester Liners *v.* Virginia-Carolina C. Co., 194 Fed. 463, the decision, as far as material herein, is stated in the syllabus as follows:

> "A charter of an English ship owned by an English company to a German Company for the carriage of a cargo from Germany to the United States, made in Germany, but in the English language, held governed as to its construction by the law of Germany where the general presumption that such was the intention of the parties was strengthened by an express provision to that effect in the bill of lading."

4. The facts that the goods were to be delivered at New York and the freight paid in New York and the freight paid for in American money in New York do not subject the contract to the laws of the United States.

Liverpool Steamship Co. *v.* Phoenix Insurance Co., 129 U. S. at page 459.

First National Bank *v.* Shaw, 61 N. Y. at page 294.

In the last-mentioned case, referring to a bill of lading or contract of affreightment, the court said in part:

> "The general principle is, that the law of the place where the contract is made is to govern, unless it is positively to be performed elsewhere. **The fact that acts are to be done abroad under a contract does not necessarily make it a contract to be performed there, in a legal sense.** Thus it has been said that a policy of insurance executed in England on a French ship for a French owner on a voyage from one French port to another is to be interpreted as an English contract. Don *v.* Lippman, 5 Cl. & F. 1, 19. The true inquiry is, what was the intent of the parties."

5. A proper construction of the language of the shipping act sections 16, 17 and 22 shows that it does not apply to the present case.

Section 1 of the Act, in its first paragraph, refers to:

> "common carrier by water in foreign commerce."

and Section 1 thereof continues in its third paragraph:

> "The term 'common carrier by water' means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes."

Section (16) of the statute bears the caption:

"Discriminatory Acts Prohibited."

and provides, as far as material in this case, as follows:

> "Discriminatory Acts Prohibited. It shall be unlawful for any common carrier by water or other person subject to this chapter alone or in conjunction with any other person, directly or indirectly
>
> First: To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever * * *"

(Note: It will be noted from Section 1 of the statute that "other person subject to this act" refers to persons in the business of forwarding, wharfage, tonnage, warehousing and terminal facilities, and has no relevancy to the instant case.)

Since Section 16 refers to

"common carrier by water"

it will be seen by reference to Section 1 that this phrase might include "common carrier by water in foreign commerce" or "common carrier by water in interstate commerce"; but inasmuch as Section 17 refers exclusively and specifically to "common carrier by water in foreign commerce" it should be inferred that Section 17 —if applicable to this case—governs the defendant herein unless for some other reason, which does not appear, Section 16 is meant to apply.

But for another reason also it is obvious that Section 16 is not intended to apply to the defendant herein.

Section 16, as already stated in its caption, refers to "discriminatory acts", and in the broadest terms forbids the giving of an undue or unreasonable

"preference or advantage,"

and also forbids inflicting or imposing any undue or unreasonable

"prejudice or disadvantage."

This language is sufficiently broad and general to include "rates" as well as "acts" and to include rates by "common carrier by water in foreign commerce"; but it is obvious that discriminatory rates by a "common carrier by water in foreign commerce" are specifically governed by Section 17.

Section 17 reads as follows, as far as material to this case:

> **"Discriminatory rates prohibited; supervision by Board.** No common carrier by water in foreign commerce shall demand, charge or collect any rate, fare or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with other foreign competitors. Whenever the Board finds that any such rate, fare or charge is demanded, charged or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare or charge. * * *"

The general provisions of Section 16, relating to

"acts"

besides the paragraph "First" quoted above, also include the second paragraph relating to obtaining transportation by means of false billing, classification, false weighing etc.; and a third paragraph to prohibit acts to influence insurance companies as to rates of insurance. These subjects are, of course, in pari materia with the acts governed by paragraph First; but these "acts" should not be held to include "rates", especially

rates of a "common carrier by water in foreign commerce", when, as we have pointed out, section 17, quoted above, explicitly and specifically deals with such rates by such foreign carriers.

Furthermore, it is well settled that general provisions in any statute will not be construed to govern particular matters for which special provisions have been made.

In Washington *v.* Miller, 235 U. S. 422, it is said at p. 428:

> "the presumption is, * * * that the special [statutory provision] is intended to remain in force as an exception to the general (Townsend *v.* Little, 109 U. S. 504, 512; Ex p. Crow Dog, Id. 556, 570; Rodgers *v.* U. S., 185 U. S. 83, 87-89)."

In re Rouse &c. Co., 91 Fed. at pp. 100-101, the Court said:

> "It is an elementary principle of construction that where there are in one act or in several acts contemporaneously passed specific provisions relating to a particular subject, they will govern in respect to that subject as against general provisions contained in the same act. See Suth, St. Const. Sec. 158. Thus, in State *v.* Inhabitants of Trenton, 38 N. J. Law, 67, it is said: 'When the intention of the lawgiver, which is to be sought after in the interpretation of a statute, is specifically declared in a prior section as to a particular matter, it must prevail over a subsequent clause in general terms, which might, by construction, conflict with it. The legislature must be presumed to have intended what it expressly stated, rather than that which might, by construction, conflict with it. The legislature must be presumed to have intended what it expressly stated, rather than that which might be inferred from the use of general terms.' And so, in Taylor *v.* Corporation of Oldham, 4 Ch. Div. 398, it is declared that general provisions in an act of parliament do not override special provisions. So that, where an act contains special provisions as to particular property, they

must be read as exceptions to the general provision, whether contained in the same or any other act. And so, also, it was held in Attorney General *v.* Lamplough, 3 Exch. Div. 214, that where special words are followed by general words in any statute any subject-matter which is aptly described by the special words comes within the purview of the statute by force of the special words, and not of the general words. Dwar. St. p. 658, thus states the rule:

> 'Where a general intention is expressed, and the act also expresses a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception; while, if a particular thing is given out or limited in the preceding parts of the statute, this shall not be taken away or altered by any subsequent general words of the same statute.'

In Felt *v.* Felt, 19 Wis. 193, Mr. Justice Paine states the rule thus:

> 'But it is a well-settled rule of construction that specific provisions relating to a particular subject must govern, in respect to that subject, as against general provisions in other parts of the law, which might otherwise be broad enough to include it.'

In State *v.* Goetze, 22 Wis. 363, 365, the same learned judge said:

> 'There is no rule of construction more reasonable and none better settled than that special provisions of a statute in regard to a particular subject will prevail over general provisions in the same or other statutes, so far as there is a conflict.'

See, also, Hoey *v.* Gilroy, 129 N. Y. 138, 29 N. E. 85; Stockett *v.* Bird's Adm'r, 18 Md. 484.''

In Hoey *v.* Gilroy, 129 N. Y. 132, at p. 138, it is said:

> ''When a statute contains two distinct provisions, one being specific with precise directions to

> do a particular thing or permit it to be done, and the other general, prohibiting certain acts which, in their general sense include the particular thing authorized by the direction, the general prohibitive clause does not control the specific authority. When a general intention is expressed and also a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception. (Churchill *v.* Crease, 5 Bing. 178; People ex rel. *v.* McClave, 99 N. Y. 83, 89.)"

The correct construction of Section 17, which in terms refers to rates by carriers in foreign commerce, renders such section wholly inapplicable to the instant case.

It will be seen that the section forbids discrimination

> "between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors."

The discrimination complained of in the instant case is an alleged discrimination between French shippers making contracts in France and consignees in the United States (fols. 134, 186, 189, 218 et seq.).

The bills of lading are all like the bills of lading printed as defendant's Exhibit B (fols. 316-353).

It will be seen that the aforementioned bill of lading shows that the merchandise then referred to was loaded by Mr. T. de Vial & Sons, 35-37 Avenue de Boutant, Bordeaux, France, and the said bill of lading is signed (fol. 353) "P. Le Captaine PP Signature Shipper."

The complainant's opening in the instant case, amongst other things shows that the goods (fol. 134)

> "were brought over here, or shipped over here, to the American Tobacco Co. as consignee, by French manufacturers."

The defendant's case below shows (fols. 182 etc.):

> "Mr. Nolan: * * * I offer in evidence a bill of lading and a translation of the same. It is be-

tween M. de Vial of Bordeaux and the French Line, to carry certain goods on the Steamer Chicago to the American Tobacco Co., 111 Fifth Avenue, New York. It contains a description of the goods, the marks and numbers and the freight rate. I should say it reads: 'Loaded by Mr. T. de Vial & Sons on the Steamship Chicago to be transported to New York' and then to be delivered to the American Tobacco Co., 111 Fifth Avenue.''

Mr. Lannon: I object to it on the ground it is immaterial.

The Court: Objection overruled with exception.

(Marked Exhibits A & B).

* * * * * * * *

(fol. 186)

The Court: * * * I want to know whether this went before the Shipping Board.

Mr. Nolan: One copy of the bill of lading, all of them being similar, as Mr. Lannon will admit.

* * * * * * * *

(fol. 189)

Mr. Nolan: Will you stipulate, in order not to involve the record, Mr. Lannon, that each of the other bills of lading for the other 278 shipments, was in the same form?

Mr. Lannon: I think you better state if there was any difference just what the difference amounted to.

The Court: I assume the differences were merely in the marks on the merchandise, the quantities or description. They were in the description of the contract. The contracts whatever they were I assume were the same in each instance.

Mr. Nolan: They are the same in each instance with the exception of article II which in two of the bills of lading contained less words than are contained in this one but which do not affect the issues in this case.

The Court: Is that understood?

Mr. Lannon: That is understood. May I also make the point for the record, that these bills of lading are not binding upon us, as they were sent to us by people over there from whom we pur-

chased the goods. We were the consignees, in other words: we were neither consignor nor the shipper.

The Court: Again I ask counsel whether or not that particular question was before the Shipping Board.

Mr. Lannon: It was, yes I understand."

At fols. 218 etc., it further appears in the record herein:

"Mr. Lannon: * * * May I make a further objection to the question, that whatever the law of France may be, it is not binding on the plaintiff for the reason that the plaintiff is not a party to this contract?

The Court: That the plaintiff is not a party to this contract?

Mr. Lannon: Is not a party to the particular contract. These are bills of lading which were taken out in France at the time the goods were shipped. We never signed it; we were simply the consignee and we were here in this country. We were no parties at all to these contracts. I understand the law to be that the consignor becomes a party to a bill of lading; it is an agreement between the shipper and the carrier. They have a lien on the goods for the freight, it is quite true, but it is not binding on us. We have a right to bring suit because we were the parties who were injured; we paid the freight. We are not bound by this because we did not enter into these contracts.

* * * * * * *

Mr. Lannon: We were the consignees. That is what the consignees do.

Mr. Nolan: If Mr. Lannon says here as a matter of record to this court that his client is not a party to this bill of lading then the court has absolutely no right to give him a remedy.

The Court: Then the case is ended.

* * * * * * * * *

Mr. Lannon: We are consignees, and to that extent, yes.

Mr. Nolan: You cannot take a part and not take the whole.

> The Court: The objection is overruled and an exception will be noted; on all the grounds stated by counsel * * *."

6. The presumption is that the lex loci contractus applies. He who claims that some other law should govern the contract has the burden of proof.

In Mutual Life Insurance Co. *v.* Cohen, 179 U. S. 262, it was held that, at page 265:

> "The presumption is in favor of the law of the place of contract. He who asserts the contrary has the burden of proof."

This rule was applied in a case where the court held that the policy of insurance was not governed by the statutes of New York as to forfeiture, when issued by a New York corporation in another state in favor of a citizen of the latter state.

7. Even if it be assumed, as is the fact in almost every case of contracts of affreightment, that the contract was to be performed in different places from the place of making, then the lex loci contractus will govern the contract.

Smith *v.* Compania Etc., 127 Misc. 512 and cases cited; China M. I. Co. *v.* Force, 142 N. Y. 100; Grand *v.* Livingston, 4 App. Div. 594; Valk *v.* Erie R. Co., 149 App. Div. 449; Western Co. *v.* Exposition Mills, 81 Georgia 522; Gulf Co. *v.* Texas, 204 U. S. 407; Chicago Etc. R. Co. *v.* Iowa, 233 U. S. 334; Liachovitzky *v.* N. Y. L. I. Co., 126 Misc. 109; Lee *v.* Selleck, 33 N. Y. 615; Pomeroy *v.* Ainsworth, 22 Barb. 118, at 128.

The learned District Court erred in not holding, as a matter of fact and law, that the intention of the parties was that the contract should be governed by the law of France.

If the question was one of fact, as we contend, the Court should have submitted such question to the jury;

and if the question was one of law, then the Court should have so held and charged the jury that the intention of the parties was to be governed by the law of France.

II.

The intention of the parties was to make the contract subject to the law of France.

(Assignment of Errors, Nos. 1, 2, 3, 4 and 5 at fols. 1727-1757; and Assignments of Errors Nos. 7 and 8, at fols. 1759-1765).

It was explicitly so provided in the contract (fols. 336-337). Rule 18 thereof reads:

> "Rule 18. In case of differences in the interpretation of the foregoing the French text is the only one that applies.
>
> "All litigations arising out of interpretation or execution of this contract or bill of lading shall be adjudged according to French law at The Tribunal of the place indicated in the bill of lading and the owners of the ship and claimants declare formally to accept its competency."

In London Assurance Co. *v.* Compania, etc., 167 U. S. 149, it was held that the English law should govern the contract, as the Court said, at page 161:

> "This is what the parties expressly stipulated for."

In New England Oil Corp. *v.* Island Oil Corp., 288 Fed. 961, the court (C. C. A., 4th Circuit) said at page 967:

> "The general rule is that, when the contract is to be performed in a place other than the place where it is made, the law of the place of performance will govern the validity, nature, obligation and effect, rather than the law where the contract is made; for that is presumed to be the

> intention of the parties. London Assurance *v.* Compania, etc., 167 U. S. 149, 160; Coughlan *v.* South Carolina R. Co., 142 U. S. 101; Andrews *v.* Pound, 13 Peters 65. But the law of the place of making the contract will govern, if that intention is expressed by the parties or is inferred from the circumstances. Coughlan *v.* South Carolina R. Co., 142 U. S. 101; Liverpool Co. *v.* Phoenix I. Co., 129 U. S. 397; Pritchard *v.* Norton, 106 U. S. 124; 5 Ruling Case Law 938. Here all the circumstances indicated that intention, and it was explicitly expressed by the parties."

In Yone Suzaki *v.* Central Argentine Rway., 27 Fed. (2d Series) 795, this Court said, per Augustus N. Hand, Circuit Court Judge, at page 800:

> "But it is quite certain that the Argentine law does not apply to the case. The charter parties were all executed in this country, the bills of lading were issued here, naming Gano Moore Company as shipper and consigning entirely to order or assigns * * *. Neither the charter nor bills of lading contained any reference to Argentine law. Such contracts were American contracts. Liverpool & G. W. Steam Co. *v.* Phenix Ins. Co., 129 U. S. 397, 9 S. Ct. 469, 32 L. Ed. 788; The Majestic (C. C. A.) 60 F. 624, 23 L. R. A. 746; Fish *v.* D., L. & W. R. R. Co., 211 N. Y. 375, 105 N. E. 661; Fonseca *v.* Cunard S. S. Co., 153 Mass. 533, 27 N. E. 665, 12 L. R. A. 340, 25 Am. St. Rep. 660; O'Regan *v.* Cunard S. S. Co., 160 Mass. 336, 35 N. E. 1070, 39 Am. St. Rep. 484."

The intention of the parties is the underlying test as to which law should govern the contract.

> Lloyd *v.* Guibert, L. R. 1 Q. B. 115;
> Chartered M. Bank *v.* Netherlands Co., L. R. 10 Q. B. Div. 521, 540.

Where a contract would be valid in the state whose law was named by the parties as controlling and invalid in another state involved in the transaction, it will be

presumed that the intention was that the contract should be governed by the law of the state named and that the law of the state in which the contract is valid, should control.

Caesar *v.* Cappell, 83 Fed. 403, at 419 et seq.

See also

N. V. Kwik Hoo Tong Handel Maalschappij *v.* Finlay, H. L. (E) 1927, A. C. 604.

In Searight *v.* Calbraith, 4 Dallas, 325, the Court said:

> "In two cases, indeed, (and I believe only in two cases) can foreign laws affect the contracts of American citizens: 1st, where they reside or trade in a foreign country; and 2nd, where the contracts plainly referring to a foreign country for their execution, adopt and recognize the lex loci. The present controversy therefore turns upon the fact whether the parties meant to abide by the law of France? And this fact the jury must decide."

And on page 328:

> "The decision depends entirely on the intention of the parties of which the jury must judge."

In U. S. Con. Co. *v.* Griffin Co., 126 Fed. 364, at 372, in reference to the question of intention, the Court said:

> "it was under the evidence a question of fact which should have been submitted to the jury for its decision."

In N. E. O. Co. *v.* Island O. Co., 288 Fed. 961, certiorari denied, 263 U. S. 702, it was held that the intention of the parties as expressed governs the contract as to the application of the lex loci contractus or the lex loci solutionis.

III.

The impairment of the executed contract herein is a denial of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(Assignments of Errors, Nos. 1, 2, 3, 4 and 5, at fols. 1727-1757).

Blackstone says concerning "executed contracts" (Book II, page 443):

> "A contract may also be either executed, as if A agrees to change horses with B, and they do it immediately; in which case the possession and the right are transferred together."

And under the authorities, the executed contract is conclusively presumed to be supported by a consideration.

Vested rights, of course, result from contract (6 R. C. L. p. 295), and as property rights acquired under an executed contract, such rights cannot be taken away, except by the exercise of "due process of law".

For the purpose of this argument, the decision in Mayer *v.* Nebraska, 262 U. S. 390, 399, and in N. Y. L. I. Co. *v.* Dodge, 246 U. S. 571, Louisville &c. Co. *v.* Kentucky, 188 U. S. 385, Bradley *v.* Lightcap, 195 U. S. 1 at 24, are applicable herein, although the definition of "due process of law" therein made was made in a case arising under the Fourteenth Amendment.

The same words in the Fifth Amendment apply equally to what was said in the cases cited, and it must be held to be an unconstitutional deprivation of property without due process of law, under the Fifth Amendment, to nullify the contract of carriage herein.

French *v.* Barber A. Co., 181 U. S. at 329.

In the Sinking Fund cases, 99 U. S. 700, it was clearly recognized that impairment of rights under contract is a deprivation of due process within the Fifth Amendment to the Constitution of the United States.

Mr. Chief Justice Waite said at page 718:

> "The United States cannot any more than a State interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad. Neither can they by legislation compel the corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation. All this is indisputable."

And Mr. Justice Field said at page 765 *et seq.:*

> "In the Federalist, Mr. Madison declared that laws impairing the obligation of contracts were contrary to the first principles of the social compact and to every principle of sound legislation; and in the *Dartmouth College Case* Mr. Webster contended that acts, which were there held to impair the obligation of contracts, were not the exercise of a power properly legislative, as their object and effect was to take away vested rights. 'To justify the taking away of vested rights,' he said,

'there must be a forfeiture, to adjust upon and declare which is the proper province of the judiciary.' Surely the Constitution would have failed to establish justice had it allowed the exercise of such a dangerous power to the Congress of the United States.

In the second place, legislation impairing the obligation of contracts impinges upon the provision of the Constitution which declares that no one shall be deprived of his property without due process of law; and that means by law in its regular course of administration through the courts of justice. Contracts are property, and a large portion of the wealth of the country exists in that form. Whatever impairs their value diminishes, therefore, the property of the owner; and if that be effected by direct legislative action operating upon the contract, forbidding its enforcement or transfer, or otherwise restricting its use, the owner is as much deprived of his property without due process of law as if the contract were impounded, or the value it represents were in terms wholly or partially confiscated.

In the case at bar the contract with the Central Pacific is, as I have said, changed in essential particulars. The company is compelled to accept it in its changed form, and by legislative decree, without the intervention of the courts, that is, without due process of law, to pay out of its earnings each year to its contractors, the United States, or deposit with them, a sum that may amount to $1,200,000, and this, twenty years before the debt to which it is to be applied becomes due and payable by the company. If this taking of the earnings of the company and keeping them from its use during these twenty years to come is not depriving the company of its property, it would be difficult to give any meaning to the provision of the Constitution. It will only be necessary hereafter to give to the seizure of another's property or earnings a new name,—to call it the creation of a sinking-fund, or the providing against the possible wastefulness or improvidence of the owner,—to get rid

> of the constitutional restraint. To my mind the evasion of that clause, the frittering away of all sense and meaning to it, are insuperable objections to the legislation of Congress. Where contracts are impaired, or when operating against the government are sought to be evaded and avoided by legislation, a blow is given to the security of all property. If the government will not keep its faith, little better can be expected from the citizen. If contracts are not observed, no property will in the end be respected; and all history shows that rights of persons are unsafe where property is insecure. Protection to one goes with protection to the other; and there can be neither prosperity nor progress where this foundation of all just government is unsettled. 'The moment,' said the elder Adams, 'the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.' ''

Even the reserved right to alter corporate charters must be held to be limited by the Fifth Amendment, as the Court pointed out in U. S. *v.* Un. Pac. Co., 160 U. S. at p. 331 as follows:

> "We may here, not inappropriately, repeat what was said in the Sinking Fund cases, 99 U. S. 700, 718, 719, 720, that 'this power has a limit' and 'cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession, of contracts lawfully made'."

The power to regulate commerce is subject to the right to due process of law.

Monongahela Co. v. *U. S.*, 148 U. S. 312.

IV.

There was no evidence of discrimination nor of unreasonable rates.

The District Court erred in directing a verdict for the plaintiff upon the bare assumption that there had been such evidence before the Shipping Board.

The District Court also erred in refusing to direct a verdict for the defendant, upon this issue. And also, assuming for this argument, that a question of fact was presented upon the evidence, the District Court erred in refusing to submit such question to the jury.

(Assignments of Errors, Nos. 1, 2, 3, 4 and 5, at fols. 1727-1757).

There is no evidence of discrimination nor of unreasonable rates. The record in this respect presents a question of law reviewable by this court.

Florida R. Co. *v.* U. S., 234 U. S. 167.

Gard *v.* Callard, 6 Maule & Selwyn 69 at p. 72.

It was assumed that the charge of five francs to the dollar for collect payments amounted to unreasonableness and discrimination. This claim has no foundation in the evidence.

In New York & Pennsylvania Co. *v.* Davis, 8 Fed. (2nd Series) 662, the syllabus correctly states the case as follows:

> "Where shipper made through shipment of pulpwood from Canada into United States, and voluntarily paid through rate in United States money on its arrival in accordance with the Interstate Commerce Act Section 6, Paragraph 7, held, such payment was not illegally exacted and shipper could not recover as overage the difference between the amount paid in United States and

> charged for carriage in Canada in depreciated Canadian currency."

It also appears that shippers were offered two alternative rates, both rates being altogether uniform as to all persons accepting either alternative. The mere existence of alternative rates is no evidence of discrimination or unreasonableness.

In Lewis *v.* Gt. West. Ry. Co., 3 Q. B. Div. 195, the carrier had two rates of carriage; a higher rate, when they took the ordinary liability of carriers; and a lower rate when relieved of liability. Shipper in shipping at "owner's risk" took lower rate. Carrier packed shipment in a manner causing damage, but its servants did not know that such damage would result from such mode of packing.

It was held that the alternative rate entitled carrier to exemption from liability for such damage.

In Union P. R. Co. *v.* Burke, 255 U. S. 317, the right to offer alternative rates is recognized; and the Court said p. 322:

> "The bill of lading was for ocean carriage only, London to New York, to which, of course, the Interstate Com. Act was not applicable * * * and the carrier, therefore, was in a position to tender to, and by the quoted provision of the bill, did tender to, the shipper the choice of paying a higher rate and being subject to less restricted recovery in case of loss. The case was plainly within the scope of the prior decisions of this court upon the subject."

The report of the Shipping Board herein fails to give effect to the evidence that the defendant also, upon collect payments, was put to the expense of forwarding the money to Europe; ran the risk of loss of its ship and consequent loss of freight; ran the risk of carriage and return carriage, or sale of the goods, if for any reason beyond the power and control of the carrier the goods were

refused; and had the additional expense of insurance (varying from one to fifty per cent.) on the goods in transportation, which it would not have where the freight was prepaid.

> Cauchois, p. 329, fols. 985 et seq. pp. 330, 331, fols. 990, 991.

Millington, Manager of the Export and Import Department of the American Tobacco Company, testified that he did not know of the two rates fixed in the tariff sheet of the defendant, and boldly declared that the reason for his wanting to pay at New York instead of prepaid in France was to gamble with the falling rate of exchange.

> "Q. That is by paying for it in Francs here, you ran the chance of the franc falling still lower and you got that much more benefit. That would be the effect of it, wouldn't it? A. Yes".
>
> Millington, p. 305, fol. 913.

And there is no evidence that there was any discrimination whatsoever in fact except (1) that alternative rates were offered to all shippers: one providing for cash payment at the current rate of exchange; and (2) providing collect payments to be made at the fixed rate of exchange of five francs to the dollar. And the shipper and shippers in cases involved herein elected to agree to and pay at the rate for collect shipments.

Neither alternative rate permitted any discrimination or unreasonable rate to be charged to any shipper electing to pay such rate. The rate was uniform throughout for the same class of shippers.

The plaintiff herein is not a shipper.

The plaintiff herein makes no attempt to show competition with shippers.

The plaintiff claims that there was competition with its competing consignees in this country.

The alleged discrimination is claimed to have existed between plaintiff, as consignee in the United States, and other consignees in the United States who were competitors of the plaintiff.

The statute has no application to such a case.

The statute has no application to competition amongst consignees, or between shippers and consignees.

In Strough *v.* N. Y. C. Etc. Co., 92 App. Div. 584, affirmed 181 N. Y. 533, it was held that there was no ground upon which to find that the rates were unreasonable. That the rates had been voluntarily paid and there was no affirmative proof of unreasonableness, and, therefore, there was no question for the jury as to such alleged issue.

In Langdon *v.* N. Y. L. E. Etc. Co., 9 N. Y. Supp. 245, affirmed 58 Hun 122, it appeared that there was (1) no affirmative proof of unreasonableness; (2) no protest or demand on the ground of alleged unreasonableness; (3) no evidence that there was any special contract to pay the rate paid; and (4) no evidence of alleged discrimination in favor of others within the meaning of the law; and that, therefore, plaintiff could not recover.

In Davis *v.* Portland Seed Co., 264 U. S. 403, it was held that claims for reparation of alleged excessive rates must be founded upon proof of damages sustained, based upon the intrinsic reasonableness of the rate to be charged.

In Pennsylvania Railroad *v.* International Coal Co., 230 U. S. 184, it was held that it was incumbent upon a plaintiff suing to recover the difference between rates paid by it and published rates, to prove damages actually sustained. These damages were not necessarily to be computed upon the difference between the published rate and the lower rate given to more favored shippers. And that the plaintiff was not necessarily overcharged, because a favored shipper was illegally undercharged.

V.

The contract was fully executed. The plaintiff accepted the benefit of the contract and of the carriage of the goods from France, and the plaintiff paid the rate as lawfully agreed upon by the shipper in France. The alleged claim of the plaintiff for reparation is a claim for damages for compensation. It is assignable to the consignee. Whether the plaintiff paid the freight in violation of, or in ignorance of, the statute and through mistake of law, it cannot recover such payment.

(Assignment of Errors, Nos. 1, 2, 3, 4 and 5, at fols. 1727-1757).

Harriman *v.* Nor. Sec. Co., 197 U. S. 245.

In the brief of Hon. Elihu Root, in the Harriman case supra, it is said, in part, at p. 278:

> "The transaction was in contravention of public policy and a penal statute, and their demand for the return of the stock by them delivered for such illegal purpose is barred by the rule in pari delicto potior est conditio defendentis et possidentis."

In that case, the delivery of the stock sought to be recovered had been held to be illegal when it was done.

In Spiller *v.* A. T. & S. F. R. Co., 253 U. S. 117, it was held at page 135:

> "A claim for damages sustained through the exaction of unreasonable charges for the carriage of freight is a claim not for a penalty but for compensation, is a property right assignable in its nature (Comegys *v.* Vasse, 1 Peters 193, 213; Irwin *v.* U. S., 97 U. S. 392, 395-396) and must be regarded as assignable at law. * * *".

This decision primarily referred to claims for reparation of excessive charges paid by shippers upon repara-

tion orders of the Interstate Commerce Commission; but the same principle of law is applicable herein.

See to same effect, Flash *v.* Conn, 109 U. S. 371, 379.

In Strough *v.* N. Y. Cen. etc. R. R. Co., 92 App. Div. 584, affirmed 181 N. Y. 533, recovery by the plaintiff shipper of alleged excessive freight rates was denied.

The court said at page 586, in part:

> "The Interstate Commerce Act, Section 6 as amended, provides that before any advance is made in freight charges, a public notice thereof of ten days shall be given. * * * The requisite ten-days' notice was not, therefore, given. The plaintiffs knew of this notice when it was first posted and continued to ship their hay, paying the increased rate without a murmur until all had been shipped. It does not appear that any part of the same was loaded in the first few days of January, so that the plaintiffs, we may say, did have the full ten-days' notice before they delivered their hay to the defendant.
>
> Nor did they make any complaint in any way of the increased charge the defendant had imposed. They paid the money voluntarily and they cannot now recover it back; Vanderbeck *v.* City of Rochester, 122 N. Y. 285; Newburgh Savings Bank *v.* Town of Woodbury, 173 id. 55; Killmer *v.* N. Y. C. & H. R. R. Co., 100 id. 395, 401; Bennett *v.* Bates, 94 id. 354, 373."

In Detroit Edison Co. *v.* Wyatt Coal Co., 293 Fed. 489, it was held that a certain alleged excess price of $41,024.18, for coal, paid by the plaintiff to the defendant, could not be recovered.

The excess price was paid by reason of the Lever Act of Congress of August 10, 1917. The court in part at page 93 said:

> "The plaintiff, upon its own showing, knowingly paid money upon a claim illegally asserted against it which it need not and should not have paid, and by so doing placed itself at the mercy of the defendant in a suit for the return or the recovery of the

same. Myers *v.* Meinrath, 101 Mass. 366; Am. Rep. 368; Atwood *v.* Fisk, 101 Mass. 366; 100 Am. Dec. 124; Rock *v.* Matthews, 35 W. Va. 534; 14 S. E. 137; 14 L. R. A. 508; Beach Mod. Con. 1443."

In Guffey-Gillespie Co. *v.* Wright, 281 Fed. 787, (C. C. A. 8th Circuit), the decision as far as material here is stated in the syllabus as follows:

> "When a criminal statute imposes specific penalties for its violation, where the act is not malum in se, and the purpose of the statute can be accomplished without declaring contracts in violation thereof illegal, the inference is that it was not the intention of the lawmakers to render such contract illegal and unenforcible."

This rule was applied to a case relating to the Champerty Act of Oklahoma, covering the offenses by persons not in possession etc.

In Taber *v.* New Bedford, 177 Mass. 197, in an opinion by Holmes, C. J., it was held that where the plaintiff paid the fees for a license for the sale of intoxicating liquors under agreement with the Mayor that if the decision as to the validity of the license was against the plaintiff his money would be repaid to him, and the plaintiff paid the money to the treasurer under a written protest that the money should be repaid if the license was not legal; and thereafter the Mayor's order removing the old Board of License Commissioners was revoked,—it was held in an action by plaintiff to recover the license money, that the sum could not be recovered. It was held that the payment was a voluntary payment; that there was no mistake of fact; and that the license was valid as long as the Board granting it remained in office.

The court said at page 199, inter alia:

> "If under a mistake of law he supposed that there was a condition attached to its payment or a further consideration in the form of a promise it was his misfortune."

In Rogers *v.* Nashville R. Co., 91 Fed. 299, Judge Lurton, in referring to the acquisition of railroad property (at p. 317), which was attacked as being in violation of the Kentucky constitution and contrary to the public policy of Tennessee, said at page 317:

> "This is an executed transaction. The title has vested. It may be a defeasible title, but it has passed out of Phillips by his deed and is vested in his conveyee. Until the state shall institute proceedings for the forfeiture of the charter or for the purpose of defeating the title, it is a sound legal title and will support this lease, unless it be subject to other objections. The principle involved is that applied in the cases of Railroad Co. *v.* Evans, 66 Fed. 809. * * * Bank *v.* Matthews, 98 U. S. 621; Cowell *v.* Springs Co., 100 U. S. 56; Fritts *v.* Palmer, 132 U. S. 282, 289."

In New Howard Co. *v.* Cohen, 207 App. Div. 588, it was held, although Sec. 29 of the Bankruptcy Act made a contract illegal by which a promissory note was given to a creditor to induce him to join in a composition agreement, that the statute does not provide that such note is absolutely void. And as the statute does not provide that the note is void, it may be enforced by a bona fide holder.

In re Bunch Co., 180 Fed. 519, a carrier delivered merchandise without requiring surrender of the bills of lading. It was held that the carrier having taken assignments of drafts secured by the bills of lading could recover against the trustee in bankruptcy of the consignee, who had wrongfully deposited the said bills as collateral security for loans.

The statute made the delivery of the merchandise without surrender of the bills of lading a crime. But the Court held, at page 527:

> "When a statute imposes specific penalties for its violation, where the act is not malum in se, and the purposes of the statute can be accomplished

without declaring contracts in violation thereof illegal, the inference is that it was not the intention of the law-makers to render such contracts illegal and unenforcible. Harris *v.* Runnels, 12 How. 79; Farmers, etc. Nat. Bank *v.* Dearing, 91 U. S. 29; National Bank *v.* Matthews, 98 U. S. 621, 629; Barnet *v.* National Bank, 98 U. S. 555; Louisiana *v.* Wood, 102 U. S. 294, 298; Fritts *v.* Palmer, 132 U. S. 282, 289, 293; Central Transportation Co. *v.* Pullman Co., 139 U. S. 24, 60; Logan County Bank *v.* Townsend, 139 U. S. 67; Merchants Cotton Press Co. *v.* Insurance Co., 151 U. S. 368, 388; Pullman Co. *v.* Central Transportation Co., 171 U. S. 138; Connoly *v.* Union Sewer Pipe Co., 184 U. S. 540, 545; Yates *v.* Jones National Bank, 206 U. S. 158, 179; Hanover National Bank *v.* First National Bank, 109 Fed. 421, 426; Dunlop *v.* Mercer, supra; Boatman's Bank *v.* Fritzlen (C. C.) 175 Fed. 183."

In Dunlop *v.* Mercer, 156 Fed. 545, it is said, at page 555:

"The general rule that an illegal contract is void and unenforceable is, however, not without exception. It is not universal in its application. It is qualified by the exception that where a contract is not evil in itself, and its invalidity is not denounced as a penalty by the express terms of, or by rational implication from, the language of the statute which it violates, and that statute prescribes other specific penalties, it is not the province of the courts to do so, and they will not thus affix an additional penalty not directed by the law-making power. Fritts *v.* Palmer, 132 U. S. 282, 289, 293, 10 Sup. Ct. 93, 33 L. Ed. 317; National Bank *v.* Matthews, 98 U. S. 621, 629, 25 L. Ed. 188; Logan County Bank *v.* Townsend, 139 U. S. 67, 76, 11 Sup. Ct. 496, 35 L. Ed. 107, 13 Sup. Ct. 66, 36 L. Ed. 956; Blodgett *v.* Lanyon Zinc Co., 120 Fed. 893, 896, 897, 58 C. C. A. 79, 82, 83; Sioux City, etc. Co. *v.* Trust Company, 82 Fed. 124, 134, 27 C. C. A. 73, 83; Hanover Nat. Bank *v.* First Nat. Bank, 109 Fed. 421, 426, 48 C. C. A. 482, 487; Speer *v.* Board of County Com'rs., 88 Fed. 749, 758, 32 C. C. A.

> 101, 110; National Bank of Xenia *v.* Stewart, 107 U. S. 676, 2 Sup. Ct. 778, 27 L. Ed. 592; Gold Mining Co. *v.* Nat. Bank, 96 U. S. 640, 24 L. Ed. 648; O'Hare *v.* Bank, 77 Pa. 96; Pangborn *v.* Westlake, 36 Iowa, 546; Chattanooga R. & C. R. Co. *v.* Evans, 14 C. C. A., 116, 121, 122, 66 Fed. 809, 815."

In Primeau *v.* Granfield, 180 Fed. 847, the plaintiff sought an accounting from his agent who purchased stocks, and who wrongfully purchased from himself. It was claimed that the transaction involved the swindling of plaintiff's customers, but the court said, per Hand, District Judge, at page 852:

> "It is true that the law will enforce no part of a contract the performance of any stipulation of which is forbidden, but the parties do not become outlaws when they make such a contract, and their rights in equity as well as at law are the same as those of others, in so far as they do not require the enforcement of any part of the contract. This is the result of the following cases, all of which were in equity: Sharp *v.* Taylor, 2 Phil. Ch. 801; Harvey *v.* Varney, 98 Mass. 118; Heath *v.* Van Cott, 9 Wis. 516; Trice *v.* Comstock, 121 Fed. 620, 57 C. C. A. 646, 61 L. R. A. 176; Ownes *v.* Ownes, 23 N. J. Eq. 60; American Association Ltd., *v.* Innis, 109 Ky. 595, 60 S. W. 388; Pitzele *v.* Cohn, 217 Ill. 30, 75 N. E. 392."

In Hill County *v.* Shaw Co., 225 Fed. 475, the Circuit Court of Appeals in the 9th Circuit held, page 477:

> "It will be premised that the plaintiff's contract was and is illegal and void because prohibited by law. * * * (Here the Court referred to the statute) The requirement is a prohibition against contracting with any other parties than those specified, and any contract in derogation thereof is nugatory and void."
>
> * * * * * * *
>
> "And the Supreme Court of the United States has expressed itself thus: 'The principle is not

new; but, on the contrary, it has been frequently announced, commencing in cases considerably over a hundred years old. It was said by Lord Mansfield in Holman *v.* Johnson, 1 Cowper, 341, decided in 1775, that: "The objection that a contract is immoral or illegal as between the plaintiff and defendant sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may so say. The principle of public policy is this: Ex dolo malo non oritur actio. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act." The cases upholding this doctrine are numerous and emphatic. Indeed, there is really no dispute concerning it.' Pullman's Car Co. *v.* Transportation Co., 171 U. S. 138, 150, 18 Sup. Ct. 808, 43 L. Ed. 108."

2. The transfer or assignment of the contract by the shipper to the plaintiff, as consignee, does not change the rule that the plaintiff cannot recover money paid by it, in execution of the contract.

Brown *v.* Schleier, 112 Fed. 577, 582; Phoenix L. I. Co. *v.* Harris, 45 App. D. C. 478.

3. Both the carrier and the shipper and consignee are obligated to obey the statute against discrimination and unreasonable rates.

The paying equally with the receiving of discriminatory and unreasonable rates is prohibited.

Armour P. Co. *v.* U. S., 209 U. S. 56, at page 70; L. & N. Co. *v.* Central I. Co., 265 U. S. 559; The Hougomont, 217 Fed. 881, 27 Fed. (2nd Series) 881; Strough *v.* N. Y. C. etc. Co., 92 App. Div. at 586-587 [affd. 181 N. Y. 533].

4. The contracts of corporations made in foreign countries are equally entitled to protection in this country with those of individuals.

Canada Southern R. Co. *v.* Gebhard, 109 U. S. 527.

The power to exclude foreign corporations altogether from this jurisdiction cannot be used as a power or means to impose unconstitutional burdens and limitations upon such foreign corporations after they have been admitted to do business within the jurisdiction.

Hanover F. I. Co. *v.* Com., 272 U. S. 494, 507.

The power to regulate foreign commerce is subject to the right to due process of law.

Monongahela Co. *v.* U. S., 148 U. S. 312.

5. If the plaintiff claims to have paid the money in wilful and knowing violation of the statute, it is obviously a party in pari delicto with the carrier in receiving it. And if on the other hand the plaintiff claims to have paid the money in ignorance of the statute, this can form no excuse justifying its recovery. If the plaintiff claims to have paid the money by mistake of law, the money cannot be recovered.

Utermehl *v.* Norment, 197 U. S. 40, at page 56 and cases cited; The Hougomont, 217 Fed. 881, 27 Fed. (2nd Series) 881 (C. C. A. 2nd Circuit); U. S. *v.* Cuba Mail S. S. Co., 200 U. S. 488.

6. The plaintiff, as consignee, after accepting the benefit of the contract is estopped to deny the legality and validity of the said contract.

Winslow *v.* B. & O. R. Co., 208 U. S. 59; Green *v.* Des Garets, 210 N. Y. 79; Brennan *v.* Nat. Eq. I. Co., 247 N. Y. 486; U. S. *v.* Lamont, 155 U. S. 303; Paige *v.* Fawse, 229 N. Y. at 117 foot.

In Ft. Worth &c. Co. *v.* Smith Bridge Co., 151 U. S. 294, it is said at p. 302:

> "But if this section * * * could be regarded as invalidating so much of the contract as provided

that the consideration should be paid in bonds, which is not to be conceded, the company having received benefits at the expense of the other contracting party, cannot object that it was not empowered to perform what it promised in return, in the mode in which it promised to perform, and would still remain liable on its contract, otherwise within its lawful powers. Hitchcock *v.* Johnston, 96 U. S. 341, 351; Cent. T. Co. *v.* Pullman Co., 139 U. S. 24, 58."

The judgment should be reversed.

Respectfully submitted,

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

COMPAGNIE GENERALE TRANSATLANTIQUE,
Plaintiff-in-Error
(Defendant Below),

against

THE AMERICAN TOBACCO COMPANY,
Defendant-in-Error
(Plaintiff Below).

BRIEF FOR DEFENDANT-IN-ERROR: PLAINTIFF BELOW.

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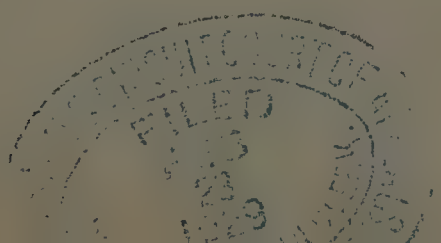

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AGAINST

THE AMERICAN TOBACCO COMPANY,
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(Plaintiff Below).

BRIEF FOR DEFENDANT-IN-ERROR: PLAINTIFF BELOW.

Summary, by Way of Introduction.

This case arises under a statute passed by Congress pursuant to its right to regulate foreign commerce. Therefore, under the authority of the *Botany Mills* case herein cited, no question of conflict of laws can arise. The statute we are concerned with is the Shipping Act, and particularly certain sections thereof precisely similar to sections of the Interstate Commerce Commission Act, giving the Board in one case, as the Commission in the other, power to award damages for discrimination. The Commission, generally speaking, has jurisdiction as to interstate commerce, by rail, and the Board as to foreign commerce, by water, to and from the United States. Procedure before the Board, finding of damages and practice followed in

the District Court are all in conformity with the *Meeker* case herein cited.

The findings and orders of the Board are made by statute *prima facie* evidence in the District Court. The Board found for The American Tobacco Company and made a reparation award. Those findings were introduced in evidence in a suit on the award in the District Court. No evidence having been offered in opposition by the Compagnie Generale Transatlantique except a transcript of the testimony and certain exhibits before the Shipping Board the Judge directed a verdict for the Tobacco Company, and we believe there is no debatable question of fact now open on this appeal.

It is only because this part of the Shipping Act has not heretofore come up for construction that we have seen fit to present the authorities at length for the convenience of the court. In our judgment, no new question of law comes up here for decision.

Statement.

This action was brought by The American Tobacco Company in the United States District Court for the Southern District of New York upon a reparation award, or "findings and order", of the United States Shipping Board for damages suffered from discrimination in freight rates in foreign commerce in import trade on cigarette paper.

The claim for reparation was properly made in the first instance before the Shipping Board instead of before the Interstate Commerce Commission, because the transportation to which the discriminatory freight rates applied was by water in foreign commerce. (See comparative statutes cited in Appendix to this brief.)

There is no novelty in the *procedure* followed. The American Tobacco Company took the steps di-

rected by the Federal Statutes relative to a claim for damages suffered as a result of "undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage", and "unjust discrimination" in foreign commerce by water on shipments destined for the United States, and reparation therefor. The Shipping Board made findings and orders, and The American Tobacco Company brought its action at law upon them. The United States Judge directed a verdict.

Facts.

The only essential fact before the District Court was, of course, the findings and order of the Shipping Board, which constituted the *prima facie* case of the plaintiff below. Such findings and order, if supported by any evidence and not disputed in the District Court, are conclusive. The underlying facts, however, are as follows:

The American Tobacco Company, the plaintiff below and defendant-in-error here, is a New Jersey corporation having its general offices at 111 Fifth Avenue, New York City. For brevity it sometimes hereinafter will be called "the Tobacco Company", sometimes plaintiff. It is engaged in the manufacture and sale of cigarettes and other tobacco products and the sale of cigarette paper.

The Compagnie Generale Transatlantique, the plaintiff-in-error and defendant below, is a French corporation having an office in New York City. For brevity it sometimes hereinafter will be called "the French Line", by which designation it is commonly known, sometimes defendant. It is authorized, by procedure taken under the corporation laws of the State of New York, to do business here. It is engaged as a common carrier by water in the transportation of property by a regular route of steam-

ships between ports of the United States and France (Complaint, par. 2; Answer, par. First; Record, fols. 11-12, 86).

"During the period April 7, 1919, to January 3, 1921, there were carried for the account of the complainant by the French Line from Bordeaux and Havre to New York, 279 shipments of cigarette papers in books and cigarette paper in bobbins, for which service freight charges in the total sum of $99,755.47 were collected upon delivery at destination. * * * These charges were calculated upon a fixed basis of five francs to the dollar in New York, and * * * *on prepaid shipments of identical commodities carried for other of its patrons from Bordeaux and Havre to New York during the same period, and in many instances upon the same vessel, the respondent accepted payment in France of freight charges in francs at the current rate of exchange.* The result was that the complainant paid more than its competitors for transportation of the same character of commodity from and to the same ports." (This matter quoted is from a statement of the facts and findings in the words of the Shipping Board. Exhibit "A" attached to the complaint, and Plaintiff's Exhibit 1 in evidence. See Record, fols. 36-38; 285-287.)

Procedure.

We stated at the outset that there is no novelty in the *procedure* followed, and indeed there is no novelty in law or principle in the case. The only novelty is the fact that this case is the first of its kind, so far as counsel know, which has come before the courts under the appropriate provisions of the Shipping Act of 1916.

These provisions, however, are precisely similar in terms to the provisions of the Interstate Com-

merce Act, providing relief for shippers in case of unduly preferential or unduly prejudicial or unjustly discriminatory freight charges, and there is no lack of authority therefore on the questions involved.

In order that the close analogy between the Shipping Act and the Interstate Commerce Act (with respect to the provision here evoked) may be apparent at a glance, we have set forth the sections with which we are concerned in Appendix A of this brief.

Pursuant to the provisions of the Shipping Act above quoted, and particularly Section 22 thereof, the Tobacco Company brought its grievance before the Shipping Board and a reparation award or findings and order in its favor were made for $54,030.82 with interest thereon at the rate of six per cent. per annum computed from the respective dates of the payments of the respective discriminatory charges (Plaintiff's Exhibit 1, Record, fols. 257, 258).

Copies of the findings of the Shipping Board and its orders were served on the French Line (Record, fol. 162) and, upon its failure to pay the reparation award after demand, an action was commenced in the United States District Court for the Southern District of New York by the Tobacco Company to recover upon said award pursuant to Section 30 of the Shipping Act quoted in Appendix A.

The Trial.

At the trial in the District Court the plaintiff below offered in evidence:

(1) Duly certified copies of the "findings and orders of the Board" pursuant to Section 30 of the Shipping Act which provide that such findings and order shall be "*prima facie* evidence of the facts therein stated" (fols. 153, 154; 256-309).

(2) A certified copy of the certificate of authority of the French Line to do business in the State of New York (fols. 159; 310-311).

(3) A statement of computation of accrued interest (fol. 172).

(4) A stipulation correcting an inadvertence in the answer (fols. 163, 164).

The plaintiff below then rested.

The defendant below introduced in evidence a bill of lading in French and a translation (fol. 183; 313 *et seq.*) and a transcript of the testimony before the Shipping Board, which transcript contained certified copies of certain exhibits before the Board (fols. 206; 403 *et seq.*). It also took the testimony of a French Lawyer as to the French Law on contracts of affreightment (fol. 207 *et seq.*); and then rested.

A verdict was then directed by the District Judge for the principal sum of the award plus interest computed to the date of the verdict and judgment entered accordingly for $78,230.09 (fol. 254).

As the order and findings of the Shipping Board are made a *prima facie* case by statute (Shipping Act, Section 30, Appendix A, of this brief), it was not necessary for the plaintiff below to introduce further evidence. This procedure followed not only the Statute, but *Meeker* v. *Lehigh Valley R. Co.*, 236 U. S. 412, 422, where the court said: "at the trial the plaintiff produced no evidence tending to show unjust discrimination, exaction of unreasonable rates, injury to Meeker and Company, or what damages were sustained by them, *other than the evidence afforded by the reports and orders of the commission*"; but that was sufficient.

The findings and orders of the Board are contained in the Exhibits A, B and C attached to the

Tobacco Company's complaint and also Plaintiff's Exhibit 1 in evidence (Record, fol. 31 *et seq.*, and fol. 256 *et seq.* (same but in different order)).

It may not be a *necessary* part of this brief but we believe it will be of aid to the court if we set forth at this place certain recitals and findings of the Board.

Findings of the Shipping Board and Facts Before it.

The Board, having stated the facts in the words in which we have already stated them—although more comprehensively—found as follows:

> "From a consideration of all the facts and evidence of record, the board concludes and decides that, under the circumstances of this case, the charges collected from complainant were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the shipping act, to the extent that they exceeded the prepaid charges on like shipments from and to the same ports, plus such additional costs as the respondent was compelled to absorb over and above those accruing in connection with prepaid shipments. The record does not afford a basis for finding the extent, if any, to which the complainant has been injured, and the case will be assigned for further hearing in respect to any such injury and the amount of reparation to which the complainant may be entitled." (Exhibit A attached to the complaint; also Plaintiff's Exhibit 1; last page of Report of Board, July 17, 1923, Record, fols. 274, 6; same 53, 4).

As will appear from the foregoing, the Shipping Board's practice is first to determine the fact of discrimination, without encumbering the record

with evidence of damages in the preliminary hearings, and if and when a determination is made that discrimination was practiced, then the Shipping Board holds further hearings (as in Interstate Commerce practice) to determine the amount of the damage, if any. (See also ruling of Trial Examiner of Shipping Board, fols. 551-2.)

The Tobacco Company had offered in evidence at the first hearing, before the Shipping Board contracts to show that it was the customer of two French manufacturers, L. La Croix Fils and Charles Pfeiffer, the former a manufacturer of cigarette paper books out of which the cigarette smoker rolls his own cigarettes, and the latter a manufacturer of cigarette paper out of which cigarettes are manufactured by machinery; this latter is known as bobbin paper. (These contracts appear in the Record as Plaintiff's Exhibits before the Shipping Board and as a part of Defendant's Exhibit C at fols. 669 *et seq.* and 685 *et seq.* of this Record.) The American Tobacco Company was accustomed to order quantities of these cigarette paper books and this cigarette bobbin paper, and the suppliers delivered such merchandise in the regular course of business to the French Line for transportation. The relation between the cigarette paper and cigarette paper book manufacturers on the one hand, and The American Tobacco Company on the other, was that of suppliers and customer. The suppliers forwarded the goods, and the customer paid the freight on the goods in New York upon delivery (fols. 704-6).

With reference to the evidence of damage (at the supplemental hearing to determine damages) the Shipping Board found as follows:

> "Much of the testimony of the complainant's witnesses examined at the supplemental hearing was addressed in detail to the several kinds of cigarette papers in books purchased and sold

during 1919, 1920, and 1921 by the complainant and other tobacco companies with which it competed, and to the various brands of cigarettes in the manufacture of which the cigarette paper in bobbins was used. The facts of record as proved by the evidence of these witnesses are that during this period all of such cigarette papers in books were imported from France, and, with the exception of some Italian and Japanese paper imported by one of the companies, all paper in bobbins used in the manufacture of cigarettes by both the complainant and such other tobacco companies likewise came from France and was purchased direct or through New York representatives of French manufacturers. Each of the companies (American Tobacco Company, Liggett & Myers Tobacco Company, R. J. Reynolds Tobacco Company, Pierre Lorillard Company, Surbrug Company, and others) had upon the same market its particular cigarette papers or cigarettes which correspond in general character and quality to respective papers and cigarettes of the other companies. While for short intervals the price of one brand or another was higher or lower than a corresponding brand of another company, it is shown that throughout 1919, 1920 and 1921 the prices obtained by the several companies for their respective products here involved were practically the same. Considerable evidence is of record evincing that at no time was the complainant able to recoup any part of the greater charges paid by it by increasing the prices of its papers or cigarettes.

"Testimony was also presented on behalf of the complainant regarding cost of production, method of computing cost items, and other matters having bearing or conceived to have pertinence in a decision of the issues involved.

"Although the respondent was represented at the supplemental hearing by counsel, who cross-examined the complainant's witnesses at length, no witnesses were presented or testimony offered on its behalf, and nothing was advanced by it tending to show the fact or

amount of any additional cost incident to the carriage of the complainant's shipments collect rather than prepaid.

"Upon all the facts in this case it is undeniable that the complainant suffered injury within the meaning of section 22 of the statute by reason of the unlawful charges paid" (Exhibit B attached to the Complaint; also Plaintiff's Exhibit 1, same being second and third pages of Supplemental Report of December 29, 1925. Record, fols. 267-272; 63-68).

The conclusion of the Shipping Board was as follows:

"From a consideration of all the facts, circumstances, and conditions of record the board finds that during the period April 7, 1919, to January 2, 1921, the complainant American Tobacco Company made 279 shipments of cigarette papers in books and cigarette paper in bobbins, as set forth and described in exhibits of record in this proceeding, on which it paid and bore transportation charges in the sum of $99,755.47; that said charges on said shipments were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the shipping act, as decided by the original report of the board herein, to the extent which they exceeded $51,898.49; that said complainant has been injured by the respondent Compagnie Generale Transatlantique within the meaning of section 22 of that statute in the sum of $47,856.98 and interest thereon at the rate of 6 per cent per annum from the respective dates of payment of the transportation charges involved as specified in column 24 of complainant's amended Exhibit A, and that the complainant American Tobacco Company is entitled to an award of reparation in the amount of said sum and interest" (Exhibit B attached to the Complaint; also Plaintiff's

Exhibit 1, same being third and fourth pages of Supplemental Report of December 29, 1925, fols. 274-6; 70-72).

An order was entered for "the sum of $47,856.98 with interest thereon at the rate of 6 per cent. per annum computed from the respective dates of payment by the complainant of the said charges" (Plaintiff's Exhibit B attached to the Complaint; also Plaintiff's Exhibit 1, being page following Supplemental Report of December 29, 1925; Record, fols. 279; 75).

This order was subsequently amended to correct a clerical error (as the board had a right to do under the authority of *Louisville & Nashville R. Co.* v. *Sloss-Sheffield Steel & Iron Co.,* 269 U. S. 217); and after a recital that "the sum to which complainant is entitled as an award of reparation is $54,030.82 and interest thereon", the Board made an order for the payment of such amount dated July 27, 1926 (Exhibit C attached to the Complaint; also Plaintiff's Exhibit 1; Record, fols. 257, 8; 78, 79).

The constitutionality of the Shipping Act is not attacked, but we have cited authorities nevertheless to support its constitutionality under Point IV. While the logical sequence of the argument by which the *Tobacco Company's* case is built up might suggest putting our Point IV, sustaining the conclusive character of our *prima facie* case, at the beginning, we have thought it would serve the practical convenience of the Court in this case if we adhered generally to the order of our opponent's arguments.

ARGUMENT.

POINT I.

The power of Congress to enact a statute relating to foreign commerce applicable to shipments upon a foreign vessel on a voyage from a foreign port to a port in the United States can not be denied in a court of the United States (*Knott* v. *Botany Worsted Mills*, 179 U. S. 69, 75).

Point I (except subdivision 5), Point II and Point III of our opponent's brief are dealt with under this caption. They argue questions of "conflict of laws" and "impairment of contracts" that do not touch upon the real legal principle involved here.

Before discussing the inapplicability of the authorities quoted by defendants' counsel it may aid in clarifying the argument if we consider what the authority of Congress is; what right of action it created; what remedy and procedure it provided; and what the nature of that right and remedy is.

Congress has power "to regulate commerce with foreign nations and among the several states" (Const. Art. I, sec. 8, cl. 3).

Pursuant to that express power delegated to it, Congress passed the Interstate Commerce Act and the Shipping Act. The sections of the Shipping Act applicable here, together with the corresponding sections of the Interstate Commerce Act, are set forth in parallel columns in the Appendix to this brief. It is made unlawful for any common carrier by water (which includes a common carrier by water in foreign commerce as well

as a common carrier by water in interstate commerce) to give any undue or unreasonable preference or advantage or to subject any person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, and no such common carrier by water in foreign commerce may demand, charge or collect any rate, fare or charge which is unjustly discriminatory between shippers. In case of violation of the Act any person injured thereby may make a complaint before the Shipping Board and ask for reparation; and the Board, after a hearing, may direct payment of damages suffered, if any, and if payment is not made the Findings and Orders of the Board become *prima facie* evidence, in an action in the District Court of the United States, of the facts therein stated.

While the *Interstate Commerce Commission* has power to *enforce reasonable* rates in *interstate Commerce* and while the *Shipping Board,* by Sec. 18, is given power relative to the *enforcement of reasonable rates over carriers by water* in *interstate commerce,* the precise power which is given to the *Shipping Board with regard to foreign commerce* (with which we are concerned) *is,* as above indicated, *to award damages in case of undue or unreasonable preference or advantage; or undue or unreasonable prejudice or disadvantage; or unjust discrimination,* just as the Interstate Commerce Commission does with respect to interstate commerce by rail, and in some cases foreign commerce involving rail shipments.

Here then is a statutory remedy which did not exist at common law; but which has existed for many years regarding interstate commerce shipments, and has existed since 1916 with regard to foreign commerce shipments by water. A steamship company engaged in foreign commerce with the

United States whose ships enter our ports can no more evade or avoid the provisions of the Shipping Act than they can evade the Harter Act, the Immigration Act or the Seamen's Act, simply because a bill of lading or other shipping document originates in a foreign country.

The distinction between the authorities quoted by our learned opponents and the authorities applicable to the instant case is definite. Defendant's counsel have discussed questions arising regarding conflict of laws in different jurisdictions. We assert that no such questions can arise in a Federal Court, where a case arises under a statute passed by the United States Congress pursuant to its power to regulate interstate or foreign commerce. That distinction is made clear by excerpts from *Knott* v. *Botany Worsted Mills* (179 U. S. 69), and *Strathearn S. S. Co.* v. *Dillon* (252 U. S. 348). In the former case the court said:

> "Before the Act of Congress * * * known as the Harter Act, it was a settled law of this country, as declared by this court, that common carriers, by land or sea, could not by any form of contract exempt themselves from responsibility for loss or damage arising from negligence of their servants, and that any stipulation for such exemption was void as against public policy; although the courts in England and in some of the states held otherwise (citing cases). In many lower courts of the United States it has been held, independently of the Harter Act, that a *stipulation that a contract should be governed by the law of England in this respect was void,* and could not be enforced in a court of the United States; *but the point has not been decided by this court. Nor is it necessary for us now to decide that point because these bills of lading were issued since the Harter Act, and we are of opinion that the case is governed by the express provisions of that Act*" (p. 72).

The question arose under Section 1 of the Harter Act, which provided that:

> "It shall not be lawful for the * * * owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports, to insert in any bill of lading * * * any agreement whereby it * * * shall be relieved from liability for loss or damage arising from negligence, fault or failure in proper loading, stowage", etc. p. 72).

The court said:

> "The * * * question is whether the first section of the Harter Act applies to a foreign vessel on a voyage from a foreign port to a port of the United States".
>
> "The power of Congress to include such cases in this enactment can not be denied in a court of the United States" (p. 74).

What we desire to point out is that the Supreme Court of the United States said that they had not decided, and found it unnecessary to decide, whether the law of the United States or the law of a foreign nation would govern the validity of a stipulation relieving the carrier from liability for negligence independent of statute. They held that a different question arose when Congress, under its delegated powers to regulate foreign commerce, had passed a law regulating such commerce.

We are concerned here with the power of Congress over a transaction in foreign commerce, not a transaction where the policy of the law in two jurisdictions is different. We do not purpose to discuss what the law might or would have been if Congress had not passed the Shipping Act. We are here under the Shipping Act and that alone.

Any discussion here of the *lex loci contractus* is not only beside the point but has no application.

If the Shipping Act is constitutional, then its applicability in the premises can not be denied in a United States court.

In *Strathearn S. S. Co.* v. *Dillon* (*supra*) the same question was passed upon and the question of the constitutionality of the Seaman's Act, so far as it might interfere with contractual rights under engagements legally made in foreign ports was discussed. The court there recognized that consideration for such rights might have lead to a different decision in that case if it were merely the policy of the law which was being considered and not an Act of Congress regulating foreign commerce.

That case came up under the statute which made applicable to seamen on foreign vessels, when in American ports, the provisions authorizing seamen to demand and receive one-half of the wages earned at any port where the vessel, after the voyage had commenced, should load or deliver cargo, notwithstanding any contractual obligations to the contrary. The court said, at pages 355, 356:

> "Whether consideration for contractual rights under engagements legally made in foreign countries would suggest a different course is not our province to inquire. It is sufficient to say that Congress has otherwise declared by the positive terms of this enactment, and if it had authority to do so, the law is enforceable in the courts.
>
> "We come, then, to consider the contention that this construction renders the statute unconstitutional as being destructive of contract rights. But we think this contention must be decided adversely to the petitioner upon the authority of previous cases in this court. The matter was fully considered in *Patterson v. The Eudora,* 190 U. S. 169, 47 L. ed. 1002, 23 Sup. Ct. Rep. 821, in which the previous decisions of this court were reviewed, and the conclusion reached that the jurisdiction of this

> government over foreign merchants vessels in our ports was such as to give authority to Congress to make provisions of the character now under consideration; that it was for this government to determine upon what terms and conditions vessels of other countries might be permitted to enter our harbors, and to impose conditions upon the shipment of sailors in our own ports, and make them applicable to foreign as well as domestic vessels. Upon the authority of that case, and others cited in the opinion therein, we have no doubt as to the authority of Congress to pass a statute of this sort, applicable to foreign vessels in our ports, and controlling the employment and payment of seamen as a condition of the right of such foreign vessels to enter and use the ports of the United States."

Counsel for the French Line have given prominence to the case of *Jackson* v. *S. S. Archimedes*, 275 U. S. 463, decided January 3, 1928, by the Supreme Court. It seems to us that this case is not an authority to support our opponents but is an authority in support of our case. It very clearly makes the distinction which we have tried to clarify. The case was decided in the Southern District by Judge Augustus N. Hand July 29, 1925 and affirmed on the opinion below by this court. The opinion of the Supreme Court unanimously affirmed the decree and, without purporting to affirm the case on the opinion of the then District Judge, used pretty much the same language. The lower court referred to the *Dillon* case and quoted the section of the statute relative to the right to claim wages that applied in that case as follows:

> "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement" (10 Fed. 2nd, 234, 235).

The *Dillon* case had held that the intent of Congress was clear that the statute *relative to payment of one-half wages* (as amended) should apply to foreign seamen on foreign vessels. But it was held in the *Archimedes* case that the provision in the section regarding advancements to the effect that it should apply

> "As well to foreign vessels while in the waters of the United States as to vessels of the United States"

meant what it said; that advancements were invalid only when made on an American vessel in either an American or a foreign port and on a foreign vessel when made in an American port but not on foreign vessels made in a foreign port (unless invalid there).

The *Dillon* case had decided that a contract made in a foreign port by a foreign seaman on a foreign ship, waiving his claim to his wages until the end of the voyage was invalid against the statute giving him the right to sue for half his wages already earned in an American port where the foreign ship came to load or deliver cargo.

The whole question was the *intent* of Congress as manifested by the statute, not the *power* of Congress.

The courts found the intent of Congress to invalidate contracts made by foreign seamen on foreign ships in foreign ports in one case; and found the intent not to do so in the other. The only thing that the courts were concerned with was to determine the intent of Congress. The power was "conceded" in the *Archimedes* case (275 U. S. 463) *as well as* in all the other cases herein cited.

There is no difficulty in finding out the intent of Congress in the case at bar because the first section of the Shipping Act provides:

> "The term 'common carrier by water' means a common carrier by water in foreign commerce

> or a common carrier by water in interstate commerce, on the high seas, or the Great Lakes, on regular routes from port to port."

and the term:

> "'common carrier by water in foreign commerce' means a carrier * * * *whether in import or export trade*".
>
> * * * * *

As there is no possible question about the intent of Congress here, it seems perfectly clear to us that the very case cited by our opponents in the effort to support their contention is absolutely conclusive in support of ours.

In *U. S.* v. *North German Lloyd* (223 U. S. 512) it was held that a foreign steamship company which lawfully collected in Germany the return passage money from emigrants embarking for New York *violates* the prohibition of the Immigration Act against making any charge for the return of aliens unlawfully brought into the United States, where the steamship company retained the money with intent to make charge and secure payment for the return voyage. The court said (at pp. 518 and 519):

> "* * * The defendant can not be indicted here for what he did in a foreign country. * * * But the parties in Germany could make a contract which would be of force in the United States. When, therefore, in Bremen the alien paid and the defendant received the 150 Rubels for a return passage, they *created a condition which was operative in New York.* If, in that city, the company had refused to honor the ticket, the alien could there have enforced his rights. In like manner, if by reason of facts occurring in New York the statute operated to rescind the contract, the rights and duties of the parties could there be determined, and

> acts of commission or omission which, as a result of the rescission, were there unlawful, could there be punished."
>
> "If, as argued, the Company did nothing in New York except to retain money which had been lawfully paid in Germany, the result is not different, because, under the circumstances, non-action was equivalent to action."

The court concluded as follows:

> "The demurrer admits that, with knowledge that it was bound to carry the excluded aliens back at is own cost, *the defendant in New York made a charge,* and retained the 150 Rubels, with intent to apply that money in satisfaction thereof. If that be true, the defendant violated the statute within the Southern District of New York, and can be indicted and tried."

In *Armour Packing Co.* v. *U. S.* (209 U. S. 56, 82) it was said:

> "The statute being within the constitutional power of Congress, and being in force when the contract was made, is read into the contract and becomes a part of it."

In *L. & N. R. R. Co.* v. *Mottley* (219 U. S. 467) it was held that a prior contract was invalidated by the Federal statute and this was held not to infringe the rights of a citizen under the Constitution.

The Court said at pages 482, 483:

> "In the *Addyston Pipe* case (p. 228) above cited, the court said: 'We do not assent to the correctness of the proposition that the constitutional guaranty of liberty to the individual to enter into private contracts limits the power of Congress and prevents it from legislating upon the subject of contracts,' relating to interstate commerce."

And again at page 485:

> "They (the authorities) are numerous and are all one way. They support the view that, as the contract in question would have been illegal if made after the passage of the commerce act, it cannot now be enforced against the railroad company, even though valid when made."

In *Wilson* v. *New* (243 U. S. 332, 349) the court said:

> "that the power to regulate also extends to many phases of the business of carriage, and embraces the right to control the contract power of the carrier insofar as the public interest requires such limitation, has also been manifested by the repeated acts of legislation as to bills of lading, tariffs and other matters too numerous to mention."

In *L. & N. R. Co.* v. *Cent. Iron & C. Co.*, 265 U. S. 59, 66, it was said that as to certain matters the carrier was free to contract *"subject to the rule which prohibits discrimination"*.

We are dealing with the question of the power of Congress to regulate foreign commerce of the United States and no attack is being made upon the constitutionality of the statute.

Let us turn again to our opponent's brief, which asserts that the Shipping Act does not apply to this case because a contract legally made in France is not nullified by the statute; that decisions on statutes compelling payment of wages to foreign seamen when entering American ports can not be given the force of authority in this case; that the contract of afreightment was legal and valid where it was made and will not be held to be invalid in the United States; that the fact the goods were to be delivered in New York and the freight paid in New York in American money did not subject the contract to the laws of the United States; that the presumption of the *lex loci contractus* applies; that the fact that the freight contract was to be performed in a different place from the place of making does not change the situation; that the inten-

tion of the parties was to make a contract subject to the laws of France; that a judgment for the plaintiff in this case impairs the obligations of contracts.

This covers the arguments in Points I, II and III except sub-division 5 of Point I.

We submit that we have sufficiently met the argument of counsel for the French Line on these points. They are discussing the question of conflict of laws arising where the policy of the law differs in two jurisdictions—the place of making the contract and the place of performance of the contract.

We take our stand upon the Federal statute passed under the authority of the Constitution of the United States pursuant to powers delegated, and expressly delegated, to the Federal Government, towit, to regulate foreign commerce; and we assert with boldness and confidence that no expedient or method of argumentation can evade or avoid the applicability of such a statute to a foreign commerce shipment to the United States in a Federal court.

The sole question is whether Congress had power to enact the Shipping Act. If it did, the French Line violated it and is liable for the damages it caused the Tobacco Company by so doing.

To say that a contract legally made in France is not nullified by the statute is simply begging the question. That such a contract may be modified to conform with the statute in so far as it affects the performance thereof in this country is not open to discussion in view of the cases cited. Such contracts have been held invalid time and time again. The cases cited by the defendant show it to have been done. What is overlooked by counsel for the French Line is that their contract of affreightment was for transportation to the United States "in import trade" and the statutes of Congress applicable thereto are presumed by law to be a part thereof.

A case under the Interstate Commerce Act itself goes far, if not indeed all the way, to sustain the

power of Congress to make this law applicable to a shipment made on foreign soil by a foreign carrier. The Interstate Commerce Act did not originally by its terms, and does not now, apply to interstate commerce only. It applies also to shipments from (or to) a foreign country to (or from) any place in the United States. Recently, and after the instant case was decided below, the Supreme Court of the United States handed down its decision in *News Syndicate Co.* v. *New York Central R. R. Co.* (275 U. S. 179).

While we believe that this case alone sustains most of the points that we have heretofore argued under this caption, we have thought that the orderly presentation of the argument indicated a discussion of this decision at the end rather than the beginning of our argument on this point, because it was determined, of course, in the light of the learning that had gone before and hence did not trace the steps necessary to a logical presentation.

In the *News Syndicate* case it appeared that the plaintiff-in-error, the complainant before the Interstate Commerce Commission, had shipped goods from a foreign country, Canada. The Supreme Court pointed out that there was no finding that the charges for transportation in so far as they took place within the United States were unjust and unreasonable, but sustained the jurisdiction to make an order for the payment of the damages to the shipper or consignee to the amount that the entire transportation charges, on *the basis of the through rate,* exceeded the charges which would have been assessed on the basis of the joint rate found by the Commission to be reasonable.

That case, then, definitely sustains the determination of the Interstate Commerce Commission relative to the applicability of the act to matters of foreign commerce made in the *Blackhorse Tobacco Company* v. *Illinois Cent. R. R. Co.* (17 I. C. C. 588), and *International Nickel Co.* v. *Director General* (166 I. C. C. 627). See also *Southern*

Pacific Terminal Co. v. *Interstate Commerce Commission* (219 U. S. 498).

The opinion in the News Syndicate is in part as follows (p. 187):

> "The Commission did not specifically find whether the portions of the charges fairly attributable to transportation within the United States were excessive to the extent that the through rates were found unreasonable. While the findings seem to indicate that the Commission held the entire excess should be charged against the American lines, we shall consider the question on the basis therein stated. The Canadian lines furnishing the transportation from Thorold to the International boundary were not before the Commission and were not sued. The defendants-in-error participated in the making of the through rate and actually collected the excessive charges. By their failure to comply with the Act, plaintiff-in-error was compelled to pay charges based on the through rates. On the facts stated, the Commission was authorized to hear the complaint * * * and had jurisdiction to make the order."

This was an overcharge case and we are citing it for its bearing on the jurisdictional question only —not on the question of damages.

The *News Syndicate* case and the case of *Southern Pacific Terminal Co.* v. *I. C. C.* (219 U. S. 498), both sustain the power of Congress to pass a law relative to foreign as well as interstate commerce, because the Interstate Commerce Act was not limited to interstate commerce; but it was limited to commerce wholly or partly by rail, whether interstate or foreign commerce, having a beginning or an end at a point within the borders of the United States. Just as the *News Syndicate* case involves the application of this rule to foreign commerce originating in a foreign country, so the *Southern Pacific* case sustains the power of Congress to legislate in regard to foreign commerce where such commerce originates within the United States.

POINT II.

Sections 16 and 17 of the Shipping Act both are applicable to the facts in the case at bar.

It is obvious, we think, that both sections 16 and 17 of the Shipping Act are applicable, and the Board so found. It held as follows:

> "The charges collected from complainant were unduly prejudicial to the complainant, unduly preferential to its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the Shipping Act" (Rec. fols. 274, 276; also fols. 53-54 this brief, p. 7).

Our opponents have set forth an argument, which we confess our inability to follow, to the effect that section 16 does not apply here, because by its terms it applies to "any common carrier by water"; and, although by definition a "common carrier by water" means a "common carrier by water in foreign commerce or a common carrier by water in interstate commerce", nevertheless they argue, because section 17 refers specifically to a common carrier by water in foreign commerce, that section 16 is to be deemed not to apply in this case.

Of course the reason that section 16 makes certain things unlawful for a common carrier by water, is that it applies to all such common carriers without limitation to either class. The reason section 17 refers specifically to "common carriers by water in foreign commerce" is this:—that section is directed toward the prohibition of discriminatory rates and is distinguished from section 18 which applies to "common carriers by water in interstate commerce" as to which the powers of the Board are somewhat

broader. Obviously, then, section 16 forbids undue and unreasonable prejudice or disadvantage in any respect whatever, whether arising in foreign commerce or interstate commerce by water, and we submit that this language is sufficient to cover any case of undue or unreasonable prejudice or disadvantage, whether in rates or otherwise. Several redundant words are used following the Interstate Commerce Act, and in order to leave no loophole in the Statute.

The same general contention made by counsel for The French Line in respect of the Shipping Act (namely, that the limited or special section is exclusive and controls as against the broader and more general section), has been unsuccessfully advanced with respect to the Interstate Commerce Act. Sections 2 and 3 of the Interstate Commerce Act compare with sections 17 and 16 of the Shipping Act respectively. In construing sections 2 and 3 of the I. C. C. Act it was held:

> "The former relates to unjust discrimination in rates. The latter is comprehensive enough, standing alone, to include every form of unjust discrimination, not only in rates, but also in the conveniences and facilities supplied to shippers in any of the details of the carrying service; and such is the judicial construction in England of the term 'undue or unreasonable preference or advantage', as used in the English 'Railway and canal traffic act'."
>
> (*United States* v. *Delaware L. & W. R. Co.*, 40 Fed. 101, 103).

Not only is there nothing in the statute to indicate that the "person" referred to in Section 22 must stand in the relation of a shipper or exporter, but the whole tenor of the Act and the judicial history of the parallel Interstate Commerce Act clearly show that the Tobacco Company is entitled to collect the reparation awarded by the Shipping Board.

Paragraph (7) of Section 6 of the Interstate Commerce Act forbids certain practices by the carrier and Section 8 gives redress to the "person or persons" injured by "any breach of the statute". In applying Section 8 no distinction has been made between shippers or consignors and consignees nor has any such limitation to "shippers" been insisted upon in the application of other sections of the Interstate Commerce Act.

The right to the relief is given by Section 22 of the Shipping Act to any person who may be injured by any violations of the Act. It follows that if the Tobacco Company was injured by the undue or unreasonable preferences or advantage given to its competitors or the undue or unreasonable prejudice or disadvantage against it, or by reason of the unjustly discriminatory rates between shippers that it was the person entitled under the Act to full reparation for the injury caused by such violation.

Any other construction would do violence to the obvious intent of Congress and the express terms of the statute. The Shipping Act was patterned after the Interstate Commerce Act and Section 31 of the former provides "that the venue and procedure in the courts of the United States in suits brought to enforce, suspend or set aside in whole or in part any order of the Board should, except as herewith otherwise provided, be the same as in similar statutes in regard to orders of the Interstate Commerce Commission". The broad objects of these two statutes dealing with transportation by land and sea respectively are the same. Therefore, the following language of the Interstate Commerce Commission and of the Supreme Court is peculiarly pertinent:

> "In this connection it is important to bear in mind the fundamental purpose of the act 'to compel the carrier as a public agent to give equal terms to all', 'to cut up by the roots

> every form of discrimination, favoritism, and inequality', and to 'place all shippers upon equal terms'."
>
> (118 Inter. Com. Rep. 412, 418.)

No such limitation to "shippers" has been insisted upon in the application of other sections of the Interstate Commerce Act. Thus in *Douglas & Co.* v. *C., R. I. & P. Co.* (16 I. C. C. 232, 242), where goods had been purchased by the complainant and shipped on its account, just as the American Tobacco Company purchased the paper in our case and had it shipped to the account of the company, the commission rejected the contention "that the Act to regulate commerce 'never undertook to protect anybody but shippers and it does not confer a right to purchase anywhere', saying:

> "It is difficult to distinguish between 'shippers' and those who purchase corn and hire a carrier to transport it."

In this connection it is to be noted that in the amended answer to the complaint filed in the District Court the plaintiff-in-error made the following admissions as to the allegations carried in paragraph 6 of the complaint:

> "The defendant admits the carriage of the goods referred to therein, the payment of freight charges by the plaintiff to the defendant, that such charges were made and paid on a fixed basis of five francs to the dollar, the carriage of similar goods and the acceptance of payment in advance for the carriage of such goods at the current rate of exchange. Defendant admits 'Exhibit D' correctly sets forth the details of the shipment, freight charges, etc."

Under those admissions the Tobacco Company would have been the person entitled to receive damages under the authority of *Southern Pacific*

R. Co. v. *Darnell-Taenzer Lumber Company,* 245 U. S. 531, 534, in which Mr. Justice Holmes said:

> "The carrier ought not to be allowed to retain his illegal profit, and the only one who can take it from him is the one that alone was in relation with him, and from whom the carrier took the sum."

It is submitted that the word "shipper" does not mean merely forwarding agent or seller of the goods, but obviously means the owner or person for whose account the carriage of the goods is undertaken. That was what the Court decided in the case of *Pittsburgh etc.* vs. *Fink* (250 U. S. 577, 581, 582):

> "The statute made it unlawful for the carrier to receive compensation less than the sum fixed by the tariff rates duly filed. Fink, as well as the carrier, must be presumed to know the law, and to have understood that the rate charged could lawfully be only the one fixed by tariff. When the carrier turned over the goods to Fink upon a mistaken understanding of the rate legally chargeable, both it and the consignee undoubtedly acted upon the belief that the charges collected were those authorized by law. Under such circumstances consistently with the provisions of the Interstate Commerce Act the consignee was only entitled to the merchandise when he paid for the transportation thereof the amount specified as required by statute. For the legal charges the carrier had a lien upon the goods, and this lien could be discharged and the consignee become entitled to the goods only upon tender or payment of this rate. The transaction, in the light of the Act, amounted to an assumption on the part of Fink to pay the only legal rate the carrier had the right to charge or the consignee the right to pay. This may be in the present as well as in some other cases a hardship upon the consignee due to the fact that he paid all that was demanded when the freight was delivered; but

> instances of individual hardship cannot change the policy which Congress has embodied in a statute in order to secure uniformity in charges for transportation * * *."

In *Spiller* v. *Atchison &c. R. Co.* (253 U. S. 117), the court, interpreting the similar provision in Interstate Commerce Act, said:

> "The provisions of the Act giving redress, * * * to persons sustaining pecuniary injury * * * must receive a reasonably liberal and not a narrow interpretation."

It is not very important whether we say that the injured party in this case is called the shipper or whether he is a person who suffered from undue prejudice, in some respect. We submit that the intent of Congress is clear.

The case of *L. & N. R. Co.* vs. *Central Iron & C. Co.*, 265 U. S. 59, without saying in so many words that the shipper means the party in interest, does, we submit, so hold in effect. That case differs from the instant case in that it was a case of an undercharge on which the carrier was suing. Our point is that it was held that the one who delivered the freight was not necessarily the party primarily liable and the railroad could recover against the real party in interest, the owner and consignee.

This case is in point also under other divisions of the argument.

POINT III.

This is a cause of action under the Shipping Act which must be enforced according to the intent of Congress.

The defendant below, under Point V of its brief argues that the contract of affreightment was fully executed and therefore that the Tobacco Company cannot recover the freight charges paid or any part thereof.

The argument is based on the assumption that the case at bar is one to recover an excessive charge paid under a mistake of law or fact. This is not *technically* a suit to recover an overcharge. It is an action for damages due to discrimination.

In passing it should be said that the Tobacco Company denied any knowledge of the lower charges accorded prepaid shipments and the Shipping Board makes reference to this testimony (Rec., fols. 45-6). We have discussed this at page 51 of this brief. The Board held, however, that knowledge or lack of knowledge was plainly immaterial (Rec., fol. 17).

The Supreme Court in the following language decided in the case of *Pittsburgh & Ry. Co.* vs. *Fink* (250 U. S. 577, 582) that the plea of estoppel could not be invoked.

> "Nor can the defendant-in-error successfully invoke the principle of estoppel against the right to collect the legal rate. Estoppel could not become the means of successfully avoiding the requirements of the act as to equal rates in violation of the provisions of the statute."

Most of the cases cited by the plaintiff-in-error in Point V are to recover money for over-payment and

the like and have little application in principle. However, a more recent case than the *Fink* case (*supra*) makes it entirely clear that even in rate cases involving contract relations the courts will not permit the theory of a closed transaction to work an evasion of the statute . That case *Louisville & Nashville R. Co.* vs. *Central Iron & C. Co.* (265 U. S. 59) arose over an under-payment and it was held that

> "No contract of a carrier could reduce the amount legally payable or release from liability a shipper who had assumed the obligation to pay the charges" (p. 65).

These two cases make it wholly unnecessary to discuss in detail the cases cited by the plaintiff-in-error under its Point V of its brief, although the same principle is necessarily discussed at other parts of this brief (see pp. 20-21).

POINT IV.

Discrimination and damages were proved, and a finding and an order properly made by the Shipping Board for the payment of a sum of money, and the District Court properly directed a verdict.

A. Preliminary.

We take up now defendant's Point IV. As this deals with questions of evidence we think it appropriate at this place to discuss further the nature of this proceeding and its sanctions. We believe such discussion will clarify the argument on this "point". We shall discuss the functions of the Shipping Board and the Interstate Commerce Commission in discrimination and rate cases. We include reference to the latter body because the controlling decisions are under similar provisions of the Interstate Commerce Act, no decisions having yet been rendered under the sections of the Shipping Act upon which we are proceeding in this case. Both boards have special experience and facilities for reaching a determination in discrimination cases and their findings are not disturbed unless clearly unsupported by evidence or overthrown by a preponderance of contradictory evidence.

The constitutionality of the Shipping Act is not here attacked, as was the constitutionality of the Interstate Commerce Act in *Interstate Commerce Commission* vs. *Brimson* (154 U. S. 447). However, as this is the first case as far as we know which has come up under the sections of the Shipping Act giving the Board power to make an award in undue prejudice and unjust discrimination cases in foreign commerce by water, precisely as the

Interstate Commerce Commission has power to make an award in such cases in interstate commerce by rail, perhaps it will not be out of order to make reference to that case.

It was said, on page 472:

> "It was not disputed at the bar, nor indeed can it be successfully denied, that the prohibition of unjust charges, discriminations, or preferences, by carriers engaged in *interstate commerce,* in respect to property or persons transported from *one state to another,* is a proper regulation of *interstate commerce,* or that the object Congress has in view by the act in question may be legitimately accomplished by it under the power to regulate *commerce among* the several states. In every substantial sense such prohibition is a rule by which *interstate commerce* must be governed, and is plainly adapted to the object intended to be accomplished."

As Congress has power "to regulate commerce with foreign nations and among the several states", we assume that the law as above stated with reference to the Interstate Commerce Act applies equally to the corresponding provisions in the Shipping Act, and we can read into it "foreign commerce" for "interstate commerce", and "between the United States and a foreign country whether in import or export trade" for "from one state to another", and "to regulate foreign commerce" for "to regulate commerce among the several states".

Hence no question of constitutionality arises.

Our opponents have not seen fit to question the constitutionality or applicability of the provisions of this act to foreign commerce by water in principle, but only in practice where a bill of lading is issued in a foreign jurisdiction. That we have already discussed.

They have not seen fit to question, either, the propriety of the procedure taken by us before the

Shipping Board, but they deny apparently that the report and findings of the Board constitute a *prima facie* case in the District Court; at least they question in argument the sufficiency of our evidence. Therefore we take this occasion to discuss the validity of our *prima facie* case.

B. The findings and order of the Board constituted our prima facie case and, there being no evidence to the contrary, are conclusive unless unsupported by evidence; hence a verdict was properly directed.

The procedure we took has recently been upheld, and a discussion of the procedure is necessary to show the force of the Commission's findings.

In *Meeker* vs. *Lehigh Valley R. R. Co.* (236 U. S., 412), the Court said:

> "It is also urged, as it was in the courts below, that the provisions in section 16 that, in actions like this, 'the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated' is repugnant to the Constitution in that it infringes upon the right of trial by jury and operates as a denial of due process of law.
>
> "This provision only establishes a rebuttable presumption. It cuts off no defense, interposes no obstacle to a full contestation of all the issues, and takes no question of fact from either court or jury. At most, therefore, it is merely a rule of evidence. It does not abridge the right of trial by jury, or take away any of its incidents. Nor does it in any wise work a denial of due process of law. In principle it is not unlike the statutes in many of the states, whereby tax deeds are made *prima facie* evidence of the regularity of all the proceedings upon which their validity depends. Such statutes have been generally sustained (citing cases). An instructive case upon the subject is *Holmes* vs. *Hunt*, 122 Mass, 505 * * * where, in an elaborate opinion by Chief Justice

> Gray, a statute making the report of an auditor *prima facie* evidence at the trial before a jury was held to be a legitimate exercise of legislative power over the rules of evidence, and in no wise inconsistent with the constitutional right of trial by jury" (p. 430).

See also *Jensen* vs. *Continental Ins. Co.* (28 Fed., 2d, 545).

The overcharge cases under the Interstate Commerce Act—where a complainant has been charged more than the published rate found reasonable by the Commission—are based on a somewhat different principle.

This is a case for damages due to undue prejudice and unjust discrimination. We are not concerned to argue the question whether the rates charged plaintiff were reasonable, and the rates charged all its competitors were too low; or whether the rates charged its competitors were reasonable and the rates charged it too high; or whether both the charge to them was too low and the charge to it too high. The point is there was undue preference or undue prejudice, and unjust discrimination, and plaintiff was damaged thereby in a sum of money which was proved before the board, as was done by the complainants in *Meeker* vs. *Lehigh Valley R. R. Co* (236 U. S., 412).

Defendant's counsel refer to *Pennsylvania R. R. Co.* v. *International Coal Co.* (230 U. S. 184), where the complainant could not recover damages because he did not prove damages. The court there held that the damages were not *necessarily* the difference between the published rate and the rate paid by more favored shippers. Of course that is so. In a rebate case, as in the instant case, damages must be proved. We are not claiming on the theory of an overcharge as if we had been overcharged the excess of what we paid over and above what our competitors paid. We are claiming

the damages as proved before, and found by, the Shipping Board which followed the *Meeker Case* where the court said:

> "If it (the evidence) showed that the damages correspond to the rebate * * * the claimant was entitled to an award upon that basis. The case of *Penn R. R. Co.* v. *International Coal Mining Co.*, 230 U. S. 184 is cited as holding otherwise but it does not do so. There a shipper, without proving that he sustained any damage, sought to recover from a carrier for giving a rebate to another shipper, and this Court, referring to Section 8 said (p. 203): 'The measure of damages was the pecuniary loss inflicted on the plaintiff as the result of the rebate paid. The damages might be the same as the rebate, or less than the rebate, or many times greater than the rebate; but unless they were proved, they could not be recovered. Whatever they were they could be recovered.' * * * The plain import of the findings is that the amounts awarded represent the complainant's actual pecuniary loss;" *"and, in view of the recitals that the findings were based upon the evidence adduced, it must be presumed, there being no showing to the contrary, that they were justified by it"* (pp. 429, 430).

The Shipping Board in the case at bar apparently was more meticulous, if not more sound than the Interstate Commerce Commission in the *Meeker Case,* for it not only found the facts to be as stated above, and that the damages were based upon the evidence, but it also recited the facts of record to show in its own language that at no time was the "complainant able to recoup any part of the greater charges paid by it by increasing the prices of its papers or cigarettes".

The *Meeker Case* very well illustrates the difference between a discrimination and undue prejudice case on the one hand and an unreasonable rate case on the other hand. It was both. We are referring

particularly, however, to the first part, that part of it which deals with the unjust discrimination part of the case. The court said:

> "Two distinct claims were involved. The *first* covered shipments from November 1, 1900, to August 1, 1901, and was granted upon the charge that the railroad company had unjustly and injuriously discriminated against Meeker & Co. by giving (on August 1, 1901) to another and extensive shipper of anthracite between the same points an indirect but substantial rebate upon all shipments during the same period, and that by reason of this rebate the other shipper had obtained a contemporaneous service, in all respects like that rendered by Meeker & Co., at a less rate than was exacted from the latter. The *second* covered shipments from August 1, 1901 to July 17, 1907 and was based upon the charge that the established rate paid by Meeker & Co., during that period was excessive and unreasonable" (p. 418).
>
> * * * * *
>
> "At the trial the plaintiff offered in evidence the reports and orders of the Commission and asked that the facts stated in the findings and orders be taken as *prima facie* true" (p. 426).
>
> * * * * *
>
> "At the trial the plaintiff produced no evidence tending to show unjust discrimination, exaction of unreasonable rates, injury to Meeker & Co., or what damages was sustained by them, other than the evidence furnished by the reports and orders of the Commission; and the defendant produced no evidence whatever save some computations" (p. 422).

The Supreme Court of the United States sustained the Commission and the District Court and reversed the United States Circuit Court of Appeals for the Third Circuit, and definitely held:

> "In view of the recital that the findings were based upon the evidence adduced, it must be presumed, there being no showing to the contrary, that they were justified by it" (pp. 429, 430).

Objection was made to the findings on both parts of that case on the untenable ground that:

> "The reports disclosed the Commission applied an erroneous and inadmissible measure of damages" (p. 428).

The court said:

> What the reports really disclose is that the Commission, 'upon consideration of the evidence adduced upon the hearings upon the question of reparation' found (a) that by reason of the unjust discrimination resulting from giving the rebate * * * Meeker & Co. were 'damaged to the extent of the difference' between what they actually paid from November 1, 1900 to August 1, 1901, and what they would have paid had they been dealt with on the same basis as was the coal company; and (b) that by reason of being charged an excessive and unreasonable rate from August 1, 1901 to July 17, 1907 Meeker & Co. were 'damaged to the extent of the difference' between what they actually paid and what they would have paid had they been given the rate which the Commission found would have been reasonable. In this we perceive nothing pointing to the application of an erroneous or inadmissible measure of damages. The Commission was authorized and required * * * to award 'the full amount of damages sustained' and that, of course, was to be determined from the evidence" (pp. 428, 429).

We have quoted above what the court then said about the evidence (p. 37, this brief).

Of course the unreasonable rate feature of the case does not concern us. It is obvious we think that the extent of the damage may be the difference in the two rates or may not. It is largely a question of competitive conditions and other matters bearing on proper proof of damages.

If this court has any interest in the general character of our testimony, it is indicated in the report of the Board and in the excerpt thereof printed on

the opening pages of this brief (particularly p. 9). We desire to emphasize again at this point that we did not, as our opponents seem to imply in one or two places in their brief, assume, and the Board did not assume, that the difference between what plaintiff paid and what its competitors paid was the measure of its damages, but defendant proved the damages suffered apart from any assumption, and the findings so state.

The Supreme Court has determined the effect to be given to a finding by the Interstate Commerce Commission in cases similar to the case presented by the Tobacco Company before the Shipping Board.

In *Ill. C. R. Co.* vs. *Intern. Comm. Comm.*, 206 U. S. 441, 466, the Court said:

> "The statute gives *prima facie* effect to the findings of the Commission, and, when those findings are concurred in by the Circuit Court, we think they should not be interfered with unless the record establishes that clear and unmistakable error has been committed" (p. 466).

U. S. vs. *Pa. R. Co.*, 21 F. (2d) 579, 580:

> "The Interstate Commerce Commission has spoken upon this subject, and, while its rulings are not conclusive upon this Court, they are at least highly persuasive." Citing *B. G. W. R. Co.* vs. *P. T. C. Co.* (D. C.) 245 Fed. 592, 600.

It was held in *Interstate Commerce Comm.* vs. *Union Pacific R. R.*, 222 U. S. 541, 547-8, as follows:

> " 'The findings of the Commission are made by law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law *and informed by experience*'. * * * Its conclusion, of course, is subject to review, but, when supported by the evidence, is accepted as final; not that its decision, involving, as it does so many and vast public interests, can be sup-

> ported by a scintilla of proof, but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order."

In *Virginia Railway Co.* vs. *U. S.*, 272 U. S. 658, 663; 71 Law Ed. 463, the Supreme Court said:

> "To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made by it in other cases, is beyond our province. Whether a rate is unjustly discriminatory is a question on which the findings of the Commission, supported by substantial evidence, is conclusive, unless there was some irregularity in the proceeding or some error in the application of rules of law. *Western Paper Makers' Chemical Co.* vs. *U. S.*, 271 U. S. 268."

Indeed the Supreme Court insists upon a very definite showing that the evidence was insufficient before setting aside findings of the Commission. It was said in the *Meeker Case* (*supra*)—as we have already pointed out, that where there was a recital that the findings were based upon the evidence it must be presumed, where there was no showing to the contrary, that they were justified by it. This principle was further developed in *Spiller* vs. *Atchison & C.*, (253 U. S. 117, 125) where the court said:

> "Obviously we hardly could sustain a decision rejecting the reparation order upon the ground that there was not sufficient evidence before the Commission to support it, when the whole of the evidence that was before the Commission was not produced" (p. 125).
>
> "If we were called upon to review the proceedings as upon a writ of error or appeal it might be difficult to say that no improper evidence was admitted, that production of the best available was insisted upon, or that a different conclusion might not have been reached upon that which was admitted. But the scope of the judicial review is not so extensive. Section 13 of the Act to regulate commerce * * * requires the Commission on receipt of a claim for

> reparation to proceed * * * 'to investigate the matters complained of in such manner and by such means as it shall deem proper', and * * * if, after such hearing the Commission shall determine that any party complainant is entitled to an award of damages, the Commission is to make an order of reparation accordingly, and in a suit based thereon 'the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated' " (p. 126).
>
> "These provisions allow a large degree of latitude in the investigation of claims for reparation, and the resulting findings and order of the Commission may not be rejected as evidence because of any errors in its procedure not amounting to a denial of a right to a fair hearing, so long as the essential facts found are based upon substantial evidence" (p. 126).

Counsel for plaintiff-in-error have referred to *N. Y. & Penn Co.* vs. *Davis,* 8 Fed (2d) 662. This was an overcharge case. We don't quite see how this is supposed to sustain any of their contentions. The court held that the jurisdiction of the Interstate Commerce Commission over transportation to and from a foreign country was limited to that part of the shipment which took place in the United States. Of course that was wrong under the decision of the United States Supreme Court in the News Syndicate Case, herein before quoted, but it was on the basis of that premise that the case was decided. The court held, quite at variance with the thesis of the plaintiff-in-error, that it was the country where the contract is to be performed and not where it is entered into that determines the character of the money in which the payment is to be made. That was not a case, however, involving any element of discrimination or undue preference. If it had been, of course, a very different question would have been presented, and if it has any bearing in this litigation it sustains the contention of the Tobacco Company.

C. The evidence before the Shipping Board sustained its report and findings and no effort was made to prove the contrary.

Defendants' Contentions.

The assertion is made that there is (1) no evidence of discrimination or unreasonable rates; (2) that the collection of a charge of 5 Francs to the dollar, valuing a Franc at 20¢ (when Francs were worth less than 10¢) does not amount to discrimination; (3) that there were alternative rates; (4) that the Board failed to give effect to certain evidence (a) that the French Line was put to the expense of forwarding money to Europe, (b) that it ran the risk of loss of its freight and (c) sustained additional expense of insurance on goods; (5) that the plaintiff was not a shipper.

(1) Referring to the assertion that there was no evidence of "discrimination or unreasonable rates":—

When defendant's counsel says there is no evidence of discrimination or unreasonable rates, we assume he means no evidence of "undue or unreasonable preference or advantage" to others, or "any undue or unreasonable prejudice or disadvantage" to The American Tobacco Company, and no demand, charge or collection of "any rate, fare or charge" which is "unjustly discriminatory"—to use the words of the statute.

In the light of the cases which have already been cited and quoted from at length, *there is only one fact in the case in the District Court* to-wit: that the Shipping Board made certain findings and an order directing the payment of a certain sum of money. Such findings and order constituted our *prima facie* case. There was no contrary proof offered. Indeed, the only witness that defendant's

counsel put on the stand was a French lawyer who discussed the French law, and it is not pretended that any effort was made to meet plaintiff's *prima facie* case.

The finding of the Board in point is as follows (Supplemental report of the Board, Rec. p. 20, fols. 59, 60):

> "This proceeding involves collect shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York, moved during the period, April 7, 1919 to January 3, 1921, and consigned to complainant, American Tobacco Co. In connection with these shipments the respondent French Line exacted charges for loading and carriage, calculated upon a fixed basis of five francs to $1., while in regard to prepaid shipments of identical commodities carried for other of its patrons from Havre and Bordeaux to New York during the same period and in many instances upon the same vessel, the respondent accepted payment of such transportation charges in francs at the current rates of exchange ranging from 5.88 to 17.07½ francs to $1 * * *
>
> "Upon all the facts in this case it is undeniable that the complainant suffered injury within the meaning of Section 22 of the Statute by reason of the unlawful charges paid" (Rec. p. 23, fols. 67, 68).

Damages were assessed at $54,000.00 and interest.

Mr. Nolan's request to go to the jury was as follows:

> "I ask to go to the jury upon the question whether the intention of the parties in the contracts herein was to subject the contracts themselves to the laws of France or to the laws of the United States; second, whether the differences in rates complained of were reasonable in view of the circumstances and the difference in service" (Rec. fols. 251-2).

The first request we have already disposed of.

We submit that the request to go to the jury on the ground of reasonableness of difference was hardly a sufficient request to go to the jury on the question whether the French Line had given any undue or unreasonable preference or advantage to any particular person, or subjected The American Tobacco Company to any undue or unreasonable prejudice or disadvantage in any respect whatever, or demanded, charged or collected from it any fare, rate or charge which was unduly discriminatory between shippers.

Obviously to charge one shipper $100,000 and to charge other shippers at the rate of less than half that amount for the same service is not a reasonable difference. But suppose it were a reasonable difference. It appears to us that there was simply a request to go to the jury on the ground that there was no overcharge, not on the ground that there was no preference, prejudice or discrimination. Hence we say that the question of discrimination is not properly before this Court.

The testimony before the Shipping Board was no part of The American Tobacco Company's case in the District Court; it was a part of the French Line's case. If the counsel for the French Line desired to contend that no evidence had been adduced before the Shipping Board, it was his duty to point out to the District Judge what line of testimony he objected to, whether the testimony proving discrimination, or the testimony proving damages, or whatever issue it was he desired to attack as unsupported by the testimony. It was his duty to show some valid objection to such testimony, whether the competency of the witness or exhibit, or the materiality or hearsay character of the testimony.

In his answer defendant's counsel admits:

> "The payment of freight charges by plaintiff to the defendant, that such charges were made and paid on a fixed basis of five francs to the dollar, the carriage of similar goods and the acceptance of payment in advance for the carriage of said goods at the current rate of exchange. Defendant admits that Exhibit "D" thereof (Exhibit "D" attached to the complaint) correctly sets forth the details of the shipments, freight charges, etc."* (fols. 89-90).

Paragraph 6 of the complaint alleges, among other things, that at the times mentioned the rate of exchange in francs was at a discount (fol. 23). While not expressly admitting this, the answer in the third paragraph thereof admits it by not denying it (fols. 89-90). That is to say, in answer to the allegations of the complaint the defendant expressly admits the carriage of similar goods for other parties at the prevailing rate of exchange, when The American Tobacco Company was charged at the rate of five francs to the dollar, and he admits that francs were at a discount and that the details "etc." are correctly set forth in schedule D (Rec. p. 28 *et seq.*). Of course, everybody knows that francs were at a discount, and counsel raised no question about the figures in Exhibit D to the complaint (which was amended Exhibit A attached to the amended complaint before the Shipping Board) showing the rate of exchange both in United States and France.

In this connection perhaps we may turn aside for a moment to refer to Exhibit A attached to the complaint. If the Court will refer to this and spread it out, the wisdom of Congress in leaving

* This includes rates of exchange.

these difficult matters of discrimination to a board having experience and facilities to make difficult computations is quite obvious. If the jury had been obliged to check the report and the findings of the Shipping Board, they would have had virtually an impossible task.

Counsel's second point as above set forth, to-wit: (2) that there is no foundation for the claim that the charge of five francs to the dollar for collect payments constitutes a discrimination. If it is not discrimination that the plaintiff was charged $100,000 for service for which its competitors were charged the equivalent of less than $50,000, we cannot imagine what discrimination could be.

In view of the findings and the authorities cited we assert that question is not now open.

In *United States* vs. *Sunday Creek Co.* (194 Fed. 252, 254) it was said:

> "The word 'discrimination' as used in the Elkins Act, is employed in its common sense, as well as with whatever enlarged or more definite meaning the content of the amendment of 1906 gave to it. Thus a shipper, who is permitted to settle his charges by paying a 'less or different compensation' to the carrier is accepting or receiving a 'discrimination'."

If the result of what the defendant admittedly did here is compared with the acceptance of notes for part of the freight charges, which was held to be discrimination against shippers not so favored by the Hocking Valley R. R. (*United States* vs. *Hocking Valley,* 194 Fed. 233) it would seem as if there could be no question whatever of the crassest sort of discrimination against the plaintiff.

(3) With all due respect to our learned opponents, we submit that it is nonsense to assert that there were alternative rates, one as favorable as the other, and that the Tobacco Company knowingly

chose to be mulcted out of $54,000. The claim is made, however, that a different rate for prepaid and collect shipments is an alternative rate and not discrimination. The cases are exactly to the contrary.

It was held by the Interstate Commerce Commission in *Boise Commercial Club* vs. *Adams Express Co.*, 17 I. C. C. Reps. 115, 121, as follows:

> "It is fundamental that there can be but one lawful rate between two points and the law takes no cognizance whatever of the distinction made by the express company between prepaid and collect shipments. It is a carrier's right as a public-service corporation to demand prepayment on all shipments and it may not distinguish between persons who pay in advance and those who do not. The carrier may waive its right to demand prepayment and accept a shipment with the understanding that it will collect the charges upon delivery to consignee; but if it does not collect such charges from the consignee it must look to the consignor for payment. The collection of the lawful rate is a duty imposed on the carrier by law, and it is given a lien upon the property transported to enforce the payment of charges. To accept a shipment without prepayment is no more than to extend credit to the consignor, and this within reasonable and non-discriminatory limits it may do. But neither a railroad, an express company, nor other public carrier, may lawfully make rates based upon the waiver of its right to collect charges at the time it receives a shipment. For if there is any risk in the carrying of the shipment without payment of charges the carrier must in fulfillment of its own duty under the law resolve that risk against the consignor and collect in advance. Rates may not be based on a temporary waiver of a carrier's right nor may the reasonableness of a rate turn upon the assumption that some will pay the lawful charges and others will not, so long as the law gives the right to collect the rate in advance

> and demands that the carrier shall without fail collect its published charges. There being, apparently, two rates from New York to Boise on packages of less than 24 pounds, the shipper is justified in demanding the lower of the two rates and the carrier may not legally demand or collect more. This Commission is likewise justified in holding that such lower rate is reasonable, or at least not unreasonably low, because it is the voluntary rate of the carrier."
>
> This ruling was reaffirmed in 24 I. C. C. 380, 398, 399.

The *Adams Express* case from which we have just quoted was referred to in the footnote of the official report of the case of *L. & N. R. Co.* vs. *Cent. Iron & C. Co.*, 265 U. S. 59, in which the Supreme Court made this interesting comment:

> "The carrier was at liberty to require prepayment of freight charges, or to permit that payment to be deferred until the goods reached the end of the transportation. Wadley Southern R. Co. *v.* Georgia, 235 U. S. 656 * * * Where payment is so deferred, the carrier may require that it be made before delivery of the goods; or concurrently with the delivery; or may permit it to be made later. Where the payment is deferred, the contract may provide that the shipper agrees absolutely to pay the charges; or it may provide merely that he shall pay if the consignee does not pay the charges demanded upon delivery of the goods. Or the carrier may accept the goods for shipment solely on account of the consignee; and, knowing that the shipper is acting merely as agent for the consignee, may contract that only the latter shall be liable for the freight charges. Or both the shipper and the consignee may be made liable. Nor does delivery of goods to a carrier necessarily import, under the general law, an absolute promise by the shipper to pay the freight changes. We must, therefore, determine what promise, if any, to pay freight charges, was, in fact, made by the Central Company."

The decision of the Interstate Commerce Commission in the *Adams Express* case has been concurred in for 20 years and hence we believe it now has the force of an authoritative judicial decision.

There is no similarity between the case at bar and the *Union Pacific R. R. Company* vs. *Burke* (255 U. S. 317) recited in our opponent's brief. In that case there was an option, based upon the difference in the service rendered, but here the discriminatory charges represented no difference in service or limitation of liability.

(4) The defendant (Brief, p. 2) raises the point that the report of the Shipping Board fails to take cognizance of evidence (a) that it was put to the expense of forwarding money to Europe, (b) ran the risk of loss of its ship and consequent loss of freight, ran the risk of carriage and return carriage and sale of goods, if for any reason beyond the power or control of the carrier the goods were refused and (c) had the additional expense of insurance on the goods in transportation which it would not have if the freight were prepaid.

(4)a. It is a complete answer to the argument that the defendant might have resorted to its fundamental right inherent in it as a common carrier to demand and receive payment in advance as a condition precedent to transportation. This the report of the Shipping Board pointed out (p. 14, f. 24).

(4)b. It appears from the bill of lading that the defendant adequately protected itself against any damage or any loss arising under the conditions enumerated. Rule 16 (Defendant's Exhibit "B", p. 112, fols. 335-336) provides that the freight is always due, whether paid in advance or at destination and whether ship arrives in good condition or is lost on the voyage.

Rule 11 (Defendant's Exhibit "B", p. 110, fol. 330) gives the captain a mortgage on all merchandise for the payment of the freight and a right of recourse against the shipper for any difference between amounts due the company and the result of the sale of goods.

(4)c. Rule 4 (Defendant's Exhibit "B", p. 107, f. 321) provides that insurance on goods is not incumbent on the shipper, and Article 13, Special Conditions (Defendant's Exhibit "B", p. 117, f. 351) provides that the company will insure the goods, if ordered to do so by the shipper, but limits its function in so doing to that of a benevolent intermediary.

With those provisions in the bill of lading it is difficult to see any disadvantage to the shipowner from the alleged causes. So far as the necessity of transferring money to France is concerned, the defendant could have collected the freight in advance, but not having done so it evidently preferred the profit arising from the arbitrary and discriminatory charge. Furthermore there is no reason of record or otherwise to indicate that it did not need the money in New York as much or more than in France.

It is significant that the French Line stopped the practice as soon as the Tobacco Company discovered the discrimination (Rec. p. 242, fols. 725-6).

It is to be noted that the Tobacco Company denied knowledge of the lower charges to be had by prepayment, *or the existence of any notation on the tariff sheets.* Counsel for the French Line has emphasized the existence of the notation on the tariff sheets—regarding the payment at the rate of 5 francs to the dollar at destination. These were on the tariff sheets which the plaintiff never saw and not on the bill of lading, (pp. 550, 558, 566, 105 *et seq.* Millington, p. 303)—not that we think the

fact has any significance. Defendant's witness Couchois testified that the tariff sheets on the subject were in his charge, that shippers were compelled to ask specific questions of the company about rates, that no clerk in the office had authority to quote rates without obtaining information from him (p. 331, fol. 993), and that while he had interviews on several occasions with representatives of The American Tobacco Company, no questions were asked about the rate (p. 332, fol. 996).

Indeed the only effort on the part of the defendant to combat that feature of the case was to argue that there were certain minor expenses to be taken into consideration. This was argument and not evidence and the plaintiff itself showed the negligible character of any such expenses (Rec. pp. 285, 6).

It is to be noted here that the original report, according to the practice of the Board, limited its findings to the fact that there had been undue preference and undue prejudice and unjust discrimination and assigned the case for further hearing

> "in respect to any such injury and the amount of reparation to which the complainant may be entitled" (Rec. p. 18, fol. 54—same p. 101, fol. 303).

In its supplemental report (Rec. p. 23, fol. 67—same p. 95, fol. 271) it has this to say regarding the proof.

> "Although the respondent was represented at the supplemental hearing by counsel who cross-examined the complainant's witnesses at length, *no witnesses were presented or testimony offered on its behalf, and nothing was advanced by it tending to show the fact or amount of any additional cost incident to the carriage of the complainant's shipments collect rather than prepaid.*"

The Supreme Court has disapproved the practice of not putting in evidence before the Interstate

Commerce Commission (*C. N. O. & T. Ry Co.* vs. *I. C. C.*, 162 U. S., 184, 196):

> "We think this a proper occasion to express disapproval of such a method of procedure on the part of the railroad companies as should lead them to withhold the larger part of their evidence before the Commission and first adduce it in the Circuit Court."

No evidence was offered at the trial in the District Court bearing on the fact of additional cost incident to the carriage of the defendant's shipments collect rather than prepaid. The Supreme Court has said in the case of *Texas & Pacific Ry.* vs. *Interstate Commerce Commission* (162 U. S. 197, 238),

> "The questions, whether charges were reasonable or otherwise, whether certain discriminations were due or undue, were questions of fact, to be passed upon by the Commission in the light of all facts duly alleged and supported by competent evidence * * *."

It would seem, therefore, in the case at bar, that the absence of any proof of facts regarding additional costs, both before the Commission and in the District Court, must indicate that no such evidence was obtainable. At all events, as the law makes the Report and Findings of the Board *prima facie* evidence of the facts therein contained (Sec. 22, Shipping Board Act), the legal effect of the failure to produce such evidence in the District Court is a failure to overcome the presumption arising from the *prima facie* case. The law on the point is stated in 22 *Corpus Juris,* page 79 as follows:

> "While the existence of a presumption of law does not affect the burden of proof, yet as an inference of fact which the law assumes to be correct, establishes in the absence of evidence to the contrary a *prima facie* case and thereby sustains the burden of evidence on the point which it covers."

In the case of *American Sulphite Pulp Company* vs. *DeGrasse Paper Co.* (157 Fed. Rep. 660, 663), the Court said:

> "The grant of a patent is presumptive evidence that the patentee is entitled to the monopoly fairly covered by his claims. He who asserts to the contrary must prove his assertions."

Meeker vs. *Lehigh Valley R. R. Co.* (236 U. S. 412, 431) and *Virginia Railway* vs. *United States* (272 U. S. 658, 663) have already been quoted at length.

(5) The question of whether The American Tobacco Company was a shipper or not has already been discussed on page 25 *et seq.* of this brief.

POINT V.

The judgment below should be affirmed.

Respectfully submitted,

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JONATHAN H. HOLMES,
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Appendix A.

Shipping Act

SECTION 1. The term 'common carrier by water in foreign commerce' means a common carrier * * * engaged in transportation by water of * * * property between the United States * * * and a foreign country whether in import or export trade* (U. S. Code, S. 801).

The term 'Common carrier by water' means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas * * * on regular routes * * *

Interstate Commerce Act

"SEC. 1. The provisions of this chapter shall apply to common carriers engaged in (a) the transportation of passengers or property wholly by railroad or partly by railroad and partly by water, when both are used under a common control, management or arrangement for a continuous carriage or shipment; or * * * from or to any place in the United States to or from a foreign country but only in so far as such transportation or transmission takes place within the United States" (U. S. Code Ann. vol. 49 p. 10)†

---

* Subject to certain exceptions that do not concern us here.

† The Section originally read as follows:

SECTION 1. That the provisions of this Act shall apply to any common * * * carriers engaged in the transportation of * * * property wholly by railroad or partly by railroad and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment from one state * * * to any other state * * *, or from any place in the United States to an adjacent foreign country, * * * also to the transportation * * * of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, *or shipped from a foreign country to any place in the United States and carried to such place from a port of entry in the United States* * * * (Original § 1 of Act of Feb. 4, 1887. Fed. Stat. Ann. (2nd Ed.), vol. 4, p. 369).

Shipping Act

SECTION 16. It shall be unlawful for any common carrier by water * * * first, to make or give any undue or unreasonable preference or advantage to any particular person * * * or description of traffic in any respect whatsoever or to subject any particular person * * * or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever (U. S. Code, S. 815).

SECTION 17. No common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare or charge which is unjustly discriminatory between shippers (U. S. Code, S. 816).

Interstate Commerce Act

SECTION 2. If any common carrier * * * shall * * * by any special rate * * * charge, demand, collect or receive from any person * * * a greater or less compensation for any services rendered * * * in the transportation of * * * property * * * than it charges, demands, collects or receives from any other person * * * for doing for him or them a like and contemporaneous service * * * such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared * * * unlawful (U. S. Code, S. 2).

SECTION 3. It shall be unlawful for any common carrier * * * to make or give any undue or unreasonable preference or advantage to any particular person * * * or any particular description of traffic in any respect whatsoever or to subject any particular person * * * or locality or any particular description of traffic to any undue or unreasonable prejudice or

Shipping Act

Interstate Commerce Act

disadvantage in any respect whatsoever (U. S. Code S. 3 subd. (1)).

SECTION 8. In case any common carrier * * * shall do * * * any act * * * prohibited or declared to be unlawful * * * such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained * * * (U. S. Code, S. 8).

SECTION 9. Any person * * * claiming to be damaged by any common carrier * * * may * * * make complaint to the Commission * * * or bring suit in his * * * own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Chapter in any District Court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure therein provided for he * * * will adopt * * * (U. S. Code, S. 9).

Shipping Act	*Interstate Commerce Act*
	SECTION 13. (1) Any person, firm, corporation * * * complaining of anything done * * * by any common carrier * * * may apply to said Commission by petition * * *; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint * * * (U. S. Code, S. 13).
SECTION 22. Any person may file with the Board a sworn complaint setting forth any violation of this Chapter by a common carrier by water * * * and asking reparation for the injury, if any, caused thereby * * * If the complaint is not satisfied the Board shall * * * investigate * * * and make such Order as it deems proper. The Board * * * may direct the payment * * * of full reparation to the complainant for the injury caused by such violation (U. S. Code, S. 821).	SECTION 16. (1) If after hearing on a complaint * * * the Commission shall determine that any * * * complainant is entitled to an award of damages * * * the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled * * *.
SECTION 30. In case of violation of any Order of the Board for the payment of money the person to whom such award was made may file in the	SECTION 16. (2) If a carrier does not comply with an Order for the payment of money within the time limit in such Order, the com-

Appendix A.

Shipping Act	*Interstate Commerce Act*
District Court for the district in which the person resides, or in which is located any office of the carrier * * * or in which is located any point of call on a regular route operated by the carrier * * * a petition or suit setting forth briefly the causes for which he claims damages and the Order of the Board in the premises. In the District Court the findings and order of the Board shall be *prima facie* evidence of the facts therein stated (U. S. Code, S. 829).	plainant * * * may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier or through which the road of the carrier runs * * * a petition setting forth briefly the causes for which he claims damages and the Order of the Commission in the premises. Such suit in the District Court of the United States shall proceed in all respects like other civil suits for damages, except that in the trial of such suit the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated (U. S. Code, S. 16).
SECTION 31. The venue and procedure in the courts of the United States in suits brought to enforce * * * any order of the Board shall * * * be the same as in similar suits in regard to orders of the Interstate Commerce Commission (U. S. Code, S. 830).	

Appendix A.

The Shipping Act is Title 46, chapter 23, United States Code, and the Interstate Commerce Act is Title 49, chapter 1, United States Code.

The section numbers under the chapters of the United States Code are the same as the original sections under the Interstate Commerce Act; but the section numbers under the chapters of the United States Code containing the Shipping Act do not correspond with the original section numbers of the Shipping Act. We have therefore set the original section number before the section and the United States Code numbers after the section.

In referring to the United States Code, we refer to the Code of Laws of the United States of America in force December 6, 1926, vol. 44, part 1, United States Statutes at Large, 69th Congress, printed by the Government Printing Office. The Shipping Act is on page 1530 *et seq.* of that volume, and the Interstate Commerce Act is on page 1649 *et seq.* of that volume.

In referring to the United States Code *Annotated* we refer of course to the West Publishing Company and Edward Thompson Company publication in the red volumes. The Shipping Act is found in the United States Code Annotated volume 46, page 256 *et seq.*, and the Interstate Commerce Act is found in the United States Code Annotated, volume 49, p. 6 *et seq.*

X4575

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

COMPAGNIE GÉNERALE TRANSATLANTIQUE,
Plaintiff-in-Error,
(Defendant Below),

against

THE AMERICAN TOBACCO COMPANY,
Defendant-in-Error,
(Plaintiff Below).

REPLY BRIEF FOR PLAINTIFF-IN-ERROR.

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Plaintiff-in-Error,
(Defendant Below)

against

THE AMERICAN TOBACCO COMPANY,
Defendant-in-Error,
(Plaintiff Below)

REPLY BRIEF OF PLAINTIFF-IN-ERROR.

I.

Replying to Points I, II and III of the brief of plaintiff:

Whether the instant case is within the intention of Congress in the Shipping Act depends upon the facts and circumstances of the instant case.

The cases of Knott v. Botany Worsted Mills, 179 U. S. 69, 75, and U. S. v. North German Lloyd, 223 U. S. 512, and similar cases cited by plaintiff differ so greatly from the instant case; while the case of Jackson v. Archimedes, 275 U. S. 463, so closely resembles the instant case as to demonstrate that the instant case is not within the intention of the Shipping Act.

The first sentence of *Knott* v. *Botany Worsted Mills,* cited in 179 U. S. at p. 69, reads:

> "The Botany Worsted Mills, a corporation of New Jersey, and Winter & Smillie, a firm of mer-

> chants in the City of New York, respectively owners of two separate lots of bales of wool, shipped at Buenos Ayres for New York on board the SS. *Portuguese Prince,* severally filed libels in admiralty in personam in the District Court of the United States * * * (for improper stowage)".

On the contrary in *Jackson* v. *Archimedes,* 275 U. S. 463, it appeared at page 464:

> "The petitioners are British seamen, who shipped at Manchester, England * * * on the Archimedes, a British vessel, * * *. When they signed the shipping articles they received advances on account of wages which were customary and sanctioned by the British law."

In *Jackson* v. *Archimedes* this Court, and the United States Supreme Court, unanimously held, that the British contract would not be invalidated in this jurisdiction, notwithstanding the act of Congress to the contrary, known as Section 10 of the Dingley Act of 1884, amended by the Seamen's Act of 1915, and the Merchant Marine Act of 1920. And, as stated in the syllabus, such act

> "does not apply either expressly or by implication to advance wages paid by foreign vessels to foreign seamen while in ports of foreign countries, whose laws sanction such payments."

That the analogy and the argument which could be deduced from the construction of the Seamen's Act was deemed to be of vital importance in the instant case can be seen from the statement of the Learned District Judge upon the trial below, which is, as far as is material, set forth at fols. 247, et seq:

> "The Supreme Court has passed upon the so-called Seamen's Acts, holding that Congress had power to legislate concerning contractual relations and compensation of seamen employed in foreign countries for work on vessels that avail themselves

> of the privilege of entering our ports. By analogy I feel bound to hold that Congress had the power in the present instance to legislate concerning discrimination in rates, and inasmuch as the statute makes the proceedings before the Shipping Board a *prima facie* case, the only other preliminary inquiry for us is whether the statute be applicable and not in violation of the provisions of the Constitution."

Also in *Jackson* v. *Archimedes,* 275 U. S. 463, the Supreme Court pointed out:

> "In short, the language of the amendment indicates no intention to extend the prohibition of the statute to advance wages paid by foreign vessels while in foreign ports. Nor can such an intention be gathered by implication or from anything in the legislative history of the amendment in which no reference was made to foreign vessels."

The "legislative history" of the Shipping Act of 1916 makes it pretty clear that cases such as the instant case were not with the intention of Congress.

This is so:

> (1) because only shippers, ports and exporters are provided for (as we note hereinafter); and
>
> (2) In the hearings upon H. R. Bill 14,337 afterwards enacted in the Shipping Act, the matter of the impracticability of nullifying foreign rates was recognized.

In the hearing, April 13-22, 1916, in reference to H. R. Bill 14337 (64th Congress, 1st Session), Prof. Emory R. Johnson, Professor of Transportation and Commerce of the University of Pennsylvania, was examined by the Committee on Merchant Marine and Fisheries, as follows:

"(p. 22) * * * I think we might have the theoretical right to fix the rates under which traffic shall be brought into this country; but it is probably not a right that we could exercise in actual practice.

Mr. Curry: You think then that under this bill if it becomes a law, this board which is proposed to be created would only have the authority to regulate export and not import trade?

Dr. Johnson: I say as a matter of practical enforcement of the law I doubted whether the shipping board could fix the rates from a foreign port to the United States.

Mr. Hadley: Then there could be no such thing as regulation of foreign commerce on the deep-sea commerce coming to our ports?

Dr. Johnson: I think that certain practices of Steamship Companies might be regulated, and if there were manifest discriminations as between ports I think possibly the shipping board could correct those discriminations. But as for saying to the Hamburg American Co. what rates it shall charge from Hamburg to the United States, that is a sovereign power which the United States would hardly exercise in practice.

Mr. Curry: I agree with you.

Dr. Johnson: I say that for the reason that Germany would have the same power that we would have and it might well happen that Germany would hold to be perfectly lawful rates from Hamburg to the United States which our shipping board would hold to be unlawful; and there would follow a conflict of sovereignty which might make impracticable the enforcement of the provisions of the act."

See also pp. 24 and 25, *ibid.*

The distinction is easy to comprehend between valid foreign contracts made for purposes which must be deemed to be lawful in all jurisdictions, such as contracts for the carriage of goods on the one hand; and on the other hand, contracts to commit breaches of the peace, acts malum in se and similar acts in the ports of a foreign country, or acts conducive to results similar in their nature which can be forbidden by the exercise of the police power.

The *North German Lloyd* case involved a transaction for unlawfully inducting alien immigrants into the United States. This contemplated a criminal offense which was to be executed in the United States, and was intended to work an evil result in the United States, which the statute specifically forbad. It was essentially no different from committing any other breach of the peace (Cf. *The Windrush,* 250 Fed. 18, at 182).

So also the statutes requiring payment of half wages to foreign seamen in American Ports (*Strathearn* v. *Dillon,* 252 U. S. 348 and *Patterson* v. *Eudora,* 190 U. S. 169), directed against the evil results which follow from depriving seamen of money while they are temporarily in foreign ports.

The same principle applies to the statutes against introducing intoxicating liquors into the Ports of the United States.

Upon the same side of the line, are placed, the cases forbidding limitations of liability under the Harter Act.

All such cases are differentiated from the instant case (1) by their inherent nature; and (2) by the pertinent statutes and their proper construction.

Compare *Am. Banana Co.* v. *U. F. Co.,* 213 U. S. 349; *Neilsen* v. *Oregon,* 212 U. S. 315; *Can. S. Co.* v. *Gebhard,* 109 U. S. 527.

In Meeker v. Lehigh Valley RR. Co., 236 U. S. 412, cited by plaintiff, the decision referred to a provision of the Interstate Commerce Act, as to the effect of Findings of Fact made by the Commission. Section 16 of the Act provides that "the Findings and Order of the Commissions shall be prima facie evidence of the facts therein stated."

This language is similar to the coordinate provision of Section 30 of the Shipping Act. In the *Meeker* case, the Court said, however at page 430:

> "This provision only establishes a rebuttable presumption. It cuts off no defense, interposes no

> obstacle to a full contestation of all the issues, and takes no question of fact from either court or jury. At most therefore it is merely a rule of evidence. It does not abridge the right of trial by jury or take away any of its incidents. Nor does it in any wise work a denial of due process of law. In principle it is not unlike the statutes in many of the States whereby tax deeds are made *prima facie* evidence of the regularity of all the proceedings upon which their validity depends. Such statutes have been generally sustained, Pillow *v.* Roberts, 13 How. 472, 476; Marx *v.* Hanthorn, 148 U. S. 172, 182; Turpin *v.* Lemon, 187 U. S. 51, 59; Cooley's Constitutional Limitations, 7th ed. 525, as have many other state and Federal enactments establishing other rebuttable presumptions." (Citing cases)

More specifically applicable to the instant case, are the rules laid down in the *Meeker* case, where it was provided at page 427, *et seq.*:

> "We think this is not the right view of the statute and that what it requires is a finding of the ultimate facts—a finding which, as applied to the present case, would disclose (1) the relation of the parties as shipper and carrier in interstate commerce; (2) the character and amount of the traffic out of which the claims arose; (3) the rates paid by the shipper for the service rendered and whether they were according to the established tariff; (4) whether and in what way unjust discrimination was practiced against the shipper from November 1, 1900, to August 1, 1901; (5) whether, if there was unjust discrimination, the shipper, was injured thereby, and, if so, the amount of his damages; (6) whether the rate collected from the shipper from August 1, 1901, to July 17, 1907, was excessive and unreasonable and, if so, what would have been a reasonable rate for the service; and (7) whether, if the rate was excessive and unreasonable, the shipper was injured thereby, and if so, the amount of his damages."

II.

Replying further to Plaintiff's Points I, II and III:

The Plaintiff American Tobacco Company was not the shipper.

At page 3 of Plaintiff's brief, it is said that American Tobacco Co. is the plaintiff below and the defendant, in-error here. At page 4 it is said that the complainant paid more than its competitors.

But it appears that the competitors were other consignees in the United States (See page 9 of plaintiff's brief.)

It appears at page 9 of the brief that the said competitors were also purchasers from France of the same kinds of cigarette paper.

At page 10 of plaintiff's brief, there is a quotation from the conclusion of the Shipping Board stating as far as material here, that the charges were unduly prejudicial to the complainant and unduly preferential of its competitors

> "and unjustly discriminatory between shippers and in violation of Sections 16 and 17 of the Shipping Act."

At page 13 of Plaintiff's brief it is pointed out that Congress has power to enact statutes forbidding any rate, fare or charge which is

> "unjustly discriminatory between shippers"

and the plaintiff's counsel strives to demonstrate that Congress has power to act in such a case, to wit: to prevent discrimination

> "between shippers".

Of course it is important to show that the plaintiff is a

"shipper"

and that there is some

"Discrimination between shippers"

so that the plaintiff can be seen to be a party within the intention of the statute and that the wrong sued for is one intended by the statute.

But in one place in plaintiff's brief, at page 22, it would seem that whether the plaintiff was a shipper or not; or whether there was discrimination between shippers, need not be necessarily decided to sustain plaintiff's argument, which is stated at page 22.

> "The sole question is whether Congress had power to enact the Shipping Act. If it did the French Line violated it and is liable for the damages it caused the Tobacco Co. by so doing."

We submit that the conclusion stated above does not necessarily follow from the premises.

At page 27, the argument is sought to be made that because Section 22 of the Shipping Act states that

> (Sec. 22) "Any person may file with the board a sworn complaint setting forth any violation of this Act, etc. * * *"

and that the Board may direct the payment

"of full reparation to the complainant"

but it is inferred that such "person" (and presumably the complainant herein) need not be a

"shipper"

in order to recover reparation.

But Section 17, which we contend is the only section which could possibly be directed against a "common car-

rier in foreign commerce'' as to a matter of ''rates'', provides, as far as material,

> (Sec. 17) ''That no common carrier by water in foreign commerce shall demand, charge or collect any fare, rate or charge which is unjustly discriminatory between
>
> shippers
>
> or ports, or unjustly prejudicial to exporters of the United States as compared with other foreign competitors.''

As the plaintiff, of course, is not a ''port'' and is not in this connection an ''exporter'', the only possible basis for allowing the plaintiff's claim must be that the plaintiff pretends to be a ''shipper''.

But the plaintiff does not rely upon persuading the court that the plaintiff is a

''Shipper''.

At page 30 of plaintiff's brief, it is finally suggested that

> ''Our point is that it was held that the one who delivered the freight was not necessarily the party primarily liable and the Railroad could recover against the real party in interest, the owner and consignee.''

But this sort of argument is not permissible under the statute. The statute refers to:

1. shippers,
2. ports, and
3. exporters.

Furthermore plaintiff says at page 15:

> ''We are here under the Shipping Act, and that alone.''

And at pages 18 and 19, it is claimed in substance, that the intent of the Act is clear, because its provisions are explicit.

And at page 22, plaintiff's counsel says:

> "We take our stand upon the Federal statute passed under the authority of the Constitution * * * and we assert with boldness and confidence that no expedient or method of argumentation can evade or avoid the applicability of such a statute to a foreign commerce shipment to the United States in a Federal Court."

It is in this ingenious manner that plaintiff's counsel attempts to extend the ambit of the statute from its proper operation as to shippers, ports and exporters, who have been subjected to discrimination by "acts" or "rates", to embrace alleged discrimination between foreign shippers and American "customers" and American "consignees", which last named "customers", and "consignees" are claimed to have been subjected to discrimination as against other American "customers" and "consignees" of French shippers.

The statute cannot be extended in this manner by construction.

III.

The argument of plaintiff's counsel at page 30 of his brief that the consignees could fill the place of the shipper and would have a right to recover reparation herein is summed up in the statement (p. 30):

> **"Our point is that it was held that the one who delivered the freight was not necessarily the party primarily liable and the railroad could recover against the real party in interest, the owner and consignee."**

But this argument overlooks what the Supreme Court said in the very case cited by the plaintiff's counsel (Plaintiff's Brief, page 30) to wit, *L. & N. R. Co.* v. *Central I. & Co. Co.*, 265 U. S. 59.

In the last cited case, at page 67 it is said:

> "Ordinarily the person from whom the goods are received for shipment assumes the obligation to pay the freight charged; and his obligation is ordinarily a primary one. This is true even where the bill of lading contains, as here, a provision imposing a liability upon the consignee. For the shipper is presumably the consignor; the transportation ordered by him is presumably on his own behalf and the promise by him to pay therefor is inferred (that is, implied in fact) as a promise to pay for goods is implied when one orders them from a dealer."

Of course, a special contract with the carrier, or to which the carrier is shown to have assented, that the consignee will pay, may bind the consignee.

But in this extremity in which the plaintiff now finds itself to make out a case as a

"shipper"

it will not do to infer that

> "it was held that the one who delivered the freight was NOT necessarily the party primarily liable, etc."

as plaintiff attempts to claim at page 30 of its Brief.

Not only is the learned plaintiff's counsel mistaken in this specific argument; but in the whole case there is not evidence which would permit a court to nullify the statute. The cause of action was given—if given to anyone—to the

"shipper"

and if plaintiff's counsel wishes to claim that some other party is equivalent to a shipper as a "real party in interest" or an "owner" or a "consignee" or a "customer", or even a "person" or "other person", some ground must be shown for giving such parties the rights of "shippers" under the Shipping Act for a cause of action such as the plaintiff claims in this case.

The purpose of Congress in confining the operation of the Shipping Act of 1916 to (1) "shippers"; (2) "ports"; and (3) exporters as against their competitors, is clearly understandable.

The purpose was to avoid attempting to govern the conduct of foreign parties as to acts done in foreign countries.

This purpose permeates the hearings and reports of Congress upon the subject. It is clearly indicated in the decision of the Supreme Court, in News Syndicate v. N. Y. C. R. R. Co. 275 U. S. 179 (cited by plaintiff), and it is concisely stated in the examination of Prof. Johnson, supra.

IV.

Replying to the argument of plaintiff at page 11 of its brief as follows:

> **"The constitutionality of the shipping act is not attacked, but we have cited authorities, nevertheless, to support its constitutionality under Point IV."**

Unfortunately, plaintiff's counsel has not noticed Point III set forth at pages 29-32 of defendant's brief, where the deprivation of property is shown to be a violation of the Fifth Amendment of the Constitution. In this connection we wish to urge strongly that the contract of carriage in the instant case was made in France, by a French shipper and a French carrier. It was legally made and it has been fully executed.

The plaintiff accepted the contract as made by the French shipper providing for the payment of the freight as therein stated and computed.

In *L. & N. R. Co.* v. *Central I. & Co. Co.,* 265 U. S. 59, cited by plaintiff's counsel, the Court said at page 70:

> "if a shipment is accepted, the consignee becomes liable, as a matter of law, for the full amount of the freight charges, whether they are demanded at the time of delivery or later."

The omission from the Constitution of specific restraint upon Congress against the impairment of contracts (similar to the prohibition upon the states in Article I, section 10 of the Constitution), does not nullify the restraint laid upon Congress by the Fifth Amendment to the Constitution forbidding the deprivation of property without due process of law.

If the Shipping Act of 1916 is to be applied and construed so as to deprive the defendant of the stipulated

compensation duly agreed to and paid in pursuance of the executed contract herein, then the said statute offends against the said constitutional provision.

In *Wilson* v. *New*, 243 U. S. 332, (cited by the plaintiff), upholding the eight hours of service law for Railroad employees [possibly resulting in minimum wages], the Court said at p. 345:

> "The doing of one thing which is authorized cannot be made the source of an authority to do another thing which there is no power to do."

V.

Replying further to Plaintiff's Brief Points I, II and III.

Plaintiff's counsel cites the cases of News Syndicate v. N. Y. C. RR. Co., 275 U. S. 179 and of T. & P. R. Co. v. Int. Com. Com., 162 U. S 197, which support the contentions of the defendant.

The News Syndicate case arose under the award of reparation by the Interstate Commerce Commission. The shipment in question was made from Thorold, Ontario, to New York City.

The Court pointed out at page 185, certain

> "rates and the portions thereof applicable to the transportation within the United States were excessive, etc."

The Court also stated the distances from the shipping point in Canada to the United States boundary and from such boundary to the point of destination, (p. 185) and that no rates had been published from the boundary to New York City.

The Court decided that the Interstate Commerce Commission has jurisdiction on a complaint (p. 186):

> "made against the United States railroad alone, to determine the reasonableness of such joint through rate", (Question One),

but the Court limited its affirmative answer to the question by saying (p. 188)

> "Question 1 is answered 'Yes, for the ascertainment of damages' ".

The Court said further, at p. 186:

> "As to the question 1.—[relating to jurisdiction] The Interstate Commerce Act applies to the lines that carried and to the transportation of, the paper from the international boundary to New York City. Sec. 1, (1) and (2). It was the duty of the defendants-in-error to establish just and reasonable rates for that service."

And at page 187:

> "The failure to establish rates covering the transportation from the international boundary contravened the provision of the Act * * *".

As to the damages the court held that in the absence of the finding as to the excessiveness of the rate from the boundary to New York City, that the entire excess should be charged against the American Lines. The Court said, at p. 187:

> "The Canadian lines furnishing the transportation from Thorold to the international boundary were not before the Commission and were not sued."

As far as the News Syndicate case has any application herein, it demonstrates that the Supreme Court refused to assume jurisdiction of the transportation in Canada, or to declare the rates or portions of rates for such Canadian transportation to be excessive.

Also, in *T. & P. R. Co.* v. *Int. Com. Com.*, 162 U. S. 197, (cited by Plaintiff), it is held that as to cargoes

shipped from Europe to ports of entry in the United States (such as New Orleans) and shipped from such ports to destination, as e. g. San Francisco,—that such shipments would not be held subject to payment of the inland freight rates from the port of entry at New Orleans etc. to destination at San Francisco.

VI.

Replying to Point III of Plaintiff's Brief:

The doctrine that plaintiff cannot recover the freight money paid upon the duly executed French contract is properly applicable to the instant case,—whatever may be the rule governing other cases—because of the facts herein, which fundamentally distinguish the instant case from different cases.

Here the contracts were legally made. They were made by French shippers in France, who could legally bind and obligate themselves to pay the freight rates stipulated for.

The plaintiff herein succeeded to the rights of the French shippers, and of course, also became bound by the reciprocal obligations.

The contracts were fully performed by both parties.

The defendant, upon the faith of the lawful and binding contracts of the shippers carried the goods.

The plaintiff, upon shipments from April 7, 1919 to January 3, 1921, paid the freight as fixed in pursuance of the bills of lading.

Contracts made in the Unites States may be subjected to some other rule; but the instant contract lawfully made and performed beyond the United States, except for delivery in New York City must be held to be executed. The plaintiff cannot under the facts and circumstances recover the freight money.

The shippers in France cannot recover the freight money after the contracts have been fully executed.

And the plaintiff, succeeding to the contract made by the French shippers cannot recover such freight money.

Even if the contracts were assumed to be *illegal,*—which we do not concede—nevertheless the contracts are not void.

> (*Jackson* v. *Archimedes,* 275 U. S. 463, 467-470, and cases cited pp. 37-43 of Deft's Main Brief; *New Howard Co.* v. *Cohen,* 207 App. Div. 588).

The Circuit Court of Appeals in the Fifth Circuit has recently again applied the rule in a clear case, which must be held to be a fortiori upon the instant case.

In *Police Jury of Richland Parish* v. *Caldwell & Co.,* 26 Fed. (2d) 74, (May 7, 1928), bonds were issued below par, by means of time payments, in violation of the Louisiana Constitution, but interest had been paid upon the "entire bond issue from the date of delivery of the bonds" and

> "the police jury brought this suit on behalf of that parish to recover the interest on each instalment from the time all the bonds were delivered until it was paid for. The District Judge upheld the contract as made and dismissed the suit."

The Circuit Court of Appeals in the Fifth Circuit affirmed the Judgment, saying, as far as material (p. 75):

> "In this case we are of opinion that the question whether the contract or statute is in violation of the Constitution is immaterial. That question would doubtless be an important one if the contract of sale and purchase of bonds were executory. But here the contract has been fully and completely performed. If it were between individuals, they would be estopped to escape its burdens. In order to recover unearned interest, it would be obliged to return the proceeds of the bonds it had received,

and that it does not offer to do. The contract will have to be enforced as the parties made it. It cannot be assumed that Caldwell & Co. would have accepted the bonds upon any other terms than those agreed upon. In Louisiana the doctrine applies to the State and its subdivisions, to the full extent that it does to individuals. State *v.* Cockren, 25 La. Ann., 356; State *v.* Taylor, 28 La. Ann. 460; State *v.* Ober, 34 La. Ann., 309; State *v.* New Orleans, 104 La. 386, 39 So. 40; Clark *v.* City of Opelousas, 147 La. 1, 84 So. 433.''

Respectfully submitted,

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